City of Lafayette
Public Meeting / Special Meetings
Lafayette City Council
Redevelopment Agency
Planning Commission
Design Review Commission

MINUTES

Lafayette Community Center – Sequoia Room
500 St. Mary's Road, Lafayette, California

May 26, 2009
5:00 p.m.

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 5:00 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, and Councilmembers Anderson, Anduri and Federighi

Planning Commissioners: Will Lovitt, Chair, Thomas Chastain, Vice Chair, Jeanne Ateljevich, Karen Maggio, and Mark Mitchell

Design Review Commissioners: Tom Lee, Chair, Bob Cleaver, Ken Hertel, Bill Marquand

Absent: Vice Mayor Andersson (recused)

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Melanie Donnelley, Acting City Attorney; Joanne Robbins, City Clerk

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent: Andersson).

4. PUBLIC COMMENTS - None

5. OLD BUSINESS

Niroop Srivatsa, Planning and Building Services Manager
Town Center Phase III: Preliminary consideration of an 89-unit residential condominium project submitted by Lafayette Residential Partners and KB Home, Inc. on a 1.47 acre vacant parcel located behind 3590-3608 Mt. Diablo Blvd. APN 243-040-035
Recommendation: Discuss and direct.

Mayor Tatzin announced Vice Mayor Andersson recusal in participating on the item.

Ms. Srivatsa gave the staff report, stating based upon comments made at a previous meeting, the applicant will decide to proceed with filing a formal application and whether or not to make changes to the application as submitted. The two documents that govern the project are the development agreement first approved in 1998 for 4.84 acre parcel. This was subsequently amended; the latest done in 2008. The other document is the settlement agreement last amended in 2008 as well. Both documents set the parameters for review of the project, they outline what the project should look like, how many units it should contain, it clearly stipulates a process for review first at this joint meeting and then if the applicant proceeds with an application, review by the DRC, Planning Commission and Council within specified deadlines.

Ms. Srivatsa said staff asked for comments on the proposal that will be presented and are stated in the packet. She asked for feedback and review of the project in total and in specificity, and asked the group to be open and frank in their comments about the project such that the applicant can determine how best to proceed. Staff supports the development of a multi-family project at the proposed location. It is right next to the BART station and is a prime location for housing. However, staff has compared the 2009 plans with the 2005 Heller Manus plans, which were contained in the settlement agreement. As submitted, staff does not find that the 2009 plans are consistent with the 2005 plans and has listed the reasons in the staff packet. Staff recommends that the applicant revise the plans to be consistent with the 2005 plans and cannot recommend approval at this time.

She said Melanie Donnolley, Acting City Attorney, was present to discuss the purpose or process of the meeting and staff will be available to answer questions thereafter.

Ms. Donnolley said that while Ms. Srivatsa had already addressed the settlement agreement and the development agreement, the settlement agreement requires a joint meeting staff is holding tonight with the Council, DRC and Planning Commission. Based upon feedback received tonight, LRP will be deciding whether to file an application. If filed, it will be reviewed pursuant to the deadlines in the agreement. If preliminary approval is indicated tonight, staff will produce submittal requirements for the applicant which will be based upon legal requirements and comments that are brought forward tonight. She asked the group to focus on the big picture; look at the design, massing and height of the project and provide feedback. The applicants can submit revised plans and staff can work with the applicant to identify ways in which the specific plan needs to be amended. The BART Block Specific Plan amendment is something the agreement anticipates requiring as to height. If there are other aspects of the plan that are also inconsistent with the Specific Plan that would require amendments, those could be brought up, as well.

Ms. Srivatsa reiterated that this is an important meeting because the applicant will decide whether or not to proceed, but the settlement agreement also states that if the applicant files an application, the submittal requirements will be based upon what is normally required for an application and also limited to comments raised by Commissioners and Councilmembers at this meeting.

Mayor Tatzin suggested that because process is particularly important in this meeting as well as content, two rounds of questions are held by staff first to focus on process and then another round is held where the group can discuss content.

Councilmember Anduri questioned why the applicant had requested this meeting. Ms. Srivatsa said there are two purposes in the settlement agreement; 1) consistency with the 2009 Heller Manus Plan; and 2) it must be a project that is economically viable to LRP. The applicant will

make an argument that changes staff is asking for will result in a project that is not economically feasible, and clearly, the applicant disagrees with staff on its findings of inconsistency.

Councilmember Federighi asked that if envisioned within the process, could this group say that we would want the project to return to the group again; i.e., that there would be certain requirements that the Commission and Council would want to see if there was consensus, rather than it be a formal application? Ms. Donnolley said the process does not call for this but it certainly could return if that was something everyone agreed to. She said the process calls for a submittal if preliminary approval is indicated.

Councilmember Federighi acknowledged whether the process calls for a submittal if preliminary approval is indicated, but by the same token, it calls for everyone to be candid about what they like and do not like and what modifications, if any, they would like to see. This being the case, it assumes that those modifications would need to be part of what is actually in the final submission. Ms. Donnolley agreed, to the extent that those modifications are required to make the project consistent with the 2005 plan and the BART Block Specific Plan.

Ms. Srivatsa said from a staff's standpoint, it would be in the best interest of the applicant to return to this group to get an idea of whether or not a formal expense of application would be met with approval. However, the language in the settlement agreement speaks only of one preliminary meeting. If the applicant were to agree to return, this could be accommodated.

Mayor Tatzin questioned what would happen if the group continued this meeting and it could be argued that it is the same meeting, and Ms. Donnolley believed this was a valid point, as well.

Councilmember Federighi said consistency with the BART Block Specific Plan was referred to. Very obviously, she did not believe the plan was consistent in terms of height, nor does the settlement or development agreement anticipate that it would be. To her, this point would be moot. Ms. Donnolley said the settlement/development agreement emphasize that the developer will have to seek an amendment to the BART Block Specific Plan.

Commissioner Lovitt asked for a definition of the economic feasibility referred to in the development agreement and he questioned whether or not future deliberations on the project would be limited only to issue raised in this meeting.

Ms. Srivatsa read the language; "After the preliminary meeting, submittal requirements shall include all CEQA compliance requirements, provided however, prior EIR studies and addenda shall be considered. Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Councilmembers and Commissioners." She said there are items that are on a checklist in a submittal application. If there are issues that are raised specific to the project, the agreement states they should be raised now and the applicant will be required to submit information to respond to those comments.

Commissioner Lovitt said, therefore, they will not be able to raise issues in subsequent meetings during the approval process. Ms. Donnolley said she did not know that the approval process anticipates other meetings; all comments should be raised tonight. Commissioner Lovitt confirmed that the process would be such that the project would go through DRC and Planning Commission at this meeting. Ms. Donnolley said to the extent that the bodies point out areas it likes and does not like, said staff will work with the developer in terms of what amendments are required to the Specific Plan, and the DRC and Planning Commission will be reviewing those.

Mayor Tatzin said discussion would be held on preliminary approval this evening, or lack thereof. He questioned what preliminary approval meant. Ms. Srivatsa said it would mean that if the group finds that the 2009 Heller Manus plans are consistent with the 2005 Heller Manus plans and that an 89-unit condominium project in its shape and size is acceptable. If the group cannot outright support the project but finds the use to be appropriate if certain modifications are made, the group can indicate what those changes should be. Lastly, if there is nothing in the project the group likes, this is the time to state it, as well. What the settlement agreement calls this is the "project preliminary comments", and it does not necessarily have to be approval.

Mayor Tatzin believed that project preliminary comments and preliminary approval were vastly different. He questioned if an acceptable course of action under the settlement agreement would be a scenario where the group could provide preliminary comments today and an application comes in and ultimately the Planning Commission decides not to approve it. Ms. Donnolley said there is no obligation to approve anything.

Councilmember Anduri suggested striking the word "approval" from any reference. He said most important is that if any Commissioner or Councilmember has a concern or under no circumstances can approve it; this is the time to express it. He understands the settlement agreement to say it is not fair to go past this meeting with these plans and then at the Council meeting, say the density is too high.

Commissioner Chastain said what would occur if there is a condition imposed to indicate the group likes the project if "x-y-z" is done, and when the project comes back and another question is prompted, he asked if the group was allowed to comment on it, or did the issue subject itself to a first scrutiny. Ms. Srivatsa believed if the Commission received an application with new information, questions can be raised and clarification can be sought on that issue. She believes what the intent is, is that supposing the group states the shape of the 4 and 5 story building is appropriate with some tweaks and then in the application review process, Commissioners/Councilmembers says no, we really like a donut-shaped building or townhouses, the comments made at this meeting should be adhered and "stuck" to. If new information is provided as part of the submittal requirements, those issues could be discussed.

Commissioner Marquand noted that there is a significant change in the number of units and questioned if there were anything that changed in the environment of the project that staff feels may provide carte blanche to do something like this. Ms. Srivatsa said KB Homes would have to answer the question as it relates to the issue of economic viability.

Mayor Tatzin asked if there were questions about staff's comments on the plans and felt it may be helpful to enumerate specific areas where staff believes the specific proposal is inconsistent with the previous Heller Manus plan.

Ms. Srivatsa referred to the table attached to the staff report and numbered items. Regarding Item 3, project attributes, she said the settlement and development agreement state that the general footprint, general elevation, general site plan and general plaza dimensions of the original Heller Manus work product shall be retained, which is the reference to the 2005 plan. Staff has found inconsistencies, and she began from north to south:

1. Item 3; Project Attributes: There is a beautiful, heritage oak tree adjacent to the BART pathway. The drip line of the tree extends over the BART pathway and into the subject property. The 2005 Heller Manus plan showed a landscape separation between the building and the BART pathway, which is missing from the 2009 plan. What it does is that

it will require construction within the drip line of the oak tree. Staff believes the building should be set back clearly outside the drip line of that tree.

Mayor Tatzin noted that on the same table, it states Option 10A, and he questioned if this steps it back adequately or not, and Ms. Srivatsa said the second section under Project Attributes refers to the fifth floor of the north leg of the building. The original submittal had the five-story façade all the way up and it was set back in Option 10A, and that is acceptable to staff.

2. Along the Southern Elevation: The 2005 Heller Manus plan had a clear break in the building along the southern elevation. There were steps leading up to the internal courtyard and a bridge connecting the upper floors. The building along the western side was set back about 60 feet from the southern property line. If a pedestrian would come out of Pizza Antica, there would be some sense of visual relief; the separation would be seen between the buildings all the way up except for the bridge. The 2009 plan has a two-story lobby that marks the entrance and anchors the southern elevation and is a good feature. What it does is not allow for any visual relief, there is no break in the building, there is a modest notch in the upper floors above it, and staff finds this to be inconsistent with the 2005 plan.

3. Along the Western Side of the Building: The DRC has always advocated for good articulation of facades on all four sides of the building. Although the western façade cannot be seen except when driving on Mt. Diablo Boulevard, staff believes it should be given as careful a treatment as the other three elevations. This is why staff finds it to be inconsistent.

4. Staff calls out that there is a change to the number of units from 76 to 89. In staff's opinion, this may have impacts and these will not be known until the environmental analysis is done. Regarding the number of units, staff does not have a problem with the number of units because it is right next to the BART station and if there is a project that can accommodate those numbers, this would be it. However, staff feels it could have implications when the environmental analysis is started.

5. Staff had the plans reviewed by Chuck DeLeuw, Leah Greenblat and Tony Coe, and preliminary comments are attached. Mr. DeLeuw is concerned with some of the parking spaces and isle widths. Staff wants to be sure that the applicant provides the number of spaces clearly called out in the settlement agreement and that the circulation works, the drop off points work, and staff feels these issues need to be addressed before staff can find the 2009 plan consistent with the 2005 plan.

Mayor Tatzin questioned if these were items to be resolved this evening. Ms. Srivatsa said it could be addressed upon the filing of an application. In terms of parking, the settlement agreement is specific in the number of spaces that this project should provide. The City should not allow the number to be reduced because it would be another amendment to the settlement agreement or inconsistency. Therefore, the applicant must be aware that if the number of spaces does decrease as a result of the reconfiguration of the parking areas, this would have to result in a reduction in the number of units.

Councilmember Anduri referred to a notch in the building on the southern side opened and above the roof of the lobby, and Ms. Srivatsa agreed that it is a notch about 30 foot set back from the southern elevation.

Commissioner Mitchell questioned the square footage of the 2005 residential plan, and Ms. Srivatsa said it was approximately 111,000 square feet. Now, it is a little over 120,000 square feet.

Councilmember Anduri said one of the things pointed out was that the original design primarily had stucco levels and the alternate now has siding. He said until the group sees what it looks like; he felt it was tricky in terms of how either would look. Ms. Srivatsa said she believed the applicant would be providing elevations of the siding alternative, which leads to comments on design. Staff did not think they could comment on stucco versus siding in isolation; it should be considered with other exterior features like the balconies, window treatments and rooflines, and they would rely on the DRC to provide input this evening.

Mayor Tatzin questioned whether or not this was DRC's only chance to provide that input? He said certainly in prior joint meetings, feedback has been received that Commissioners feel that these things are fairly complete by the time they get to meetings. The group did not necessarily intend that, but it is how this comes across. He said he did not believe they want to do this, nor do they want to put DRC on the hook for saying this is the set of materials they will approve as opposed to perhaps another set of materials they may look at.

Ms. Donnolley said all issues need to be raised as much as possible and indications of what the Commissions do and do not want. Mayor Tatzin questioned whether it was okay to say, "I want to study the exteriors." Ms. Donnolley suggested they indicate things they will and will not consider and provide comments as definite as possible. However, she did not believe this was absolutely required.

Commissioner Maggio questioned how density would be calculated, and Ms. Srivatsa said when the Town Center development was approved in 1998 it was a horizontally mixed use project on 4.84 acres. At that time, there were 75 units in Phase II and a 26,000 square foot office building in Phase III. The density was calculated using the 4.84 acres and not the acreage of Phase II alone. Consistent with this practice, in looking at today's project, there are 75 units in Phase II and the 2005 plan had 76 units in Phase III. Therefore, the resultant density is 31 units to the acre. With the 2009 plans of 89 units, the density increases to 34 units to the acre. Staff had employed the same practices when the project was approved and she confirmed with Commissioner Maggio that the density of 34 units per acre is the resultant density of Phase III.

Commissioner Hertel questioned where the boundaries of the lot lie. He also questioned and confirmed with Ms. Srivatsa that the property lines extend to include the creek area. Phase III includes the creek and BART pathway. He asked to discuss net and gross density and developable portions of the property versus gross areas that are undevelopable. Ms. Srivatsa said they could, but this was not how the Town Center project was started in the 1990's. Staff looked at it as a PUD with three distinct phases and three distinct uses and a common amenity, which was the BART pathway and creek. Given that this ran in the middle of the project, staff looked at the gross area.

Commissioner Hertel believed that the project actually builds out physically at a lot higher density because the creek and pathway are virtually taken out, and Ms. Srivatsa agreed.

Mayor Tatzin said an earlier project Council approved decades ago for the parcel under grounded the creek and put in underground parking. It was a different use mix, but in this case it made more sense to maintain the creek.

Applicant Presentation:

Ray Panek, Senior VP, KB Homes, South Bay, introduced Jeffrey Heller from Heller Manus Architect, Bill Smith with Smith and Smith Landscape Architect, and David Bowie, representing LRP. He said they were excited that a settlement agreement had been reached and they could come off of their hiatus from 2005. The project is exciting. They assembled a good team, had done a lot of work in 2005 but needed to drill down some of the specifics, understand constraints, understand economics better and what it takes to build it the right way in the City of Lafayette. He said Patrick Stevens, of Stevens Ferrone and Bailey Geotechnical Engineers, provided some technical information that helped them understand what it takes to build this building, and Bob Simmons from ConnexTech has a patented system for building a steel building. In 2005, they spoke of building a standard wood frame building and changed their mind about this. Given the quality and type of client they will attract, they feel the steel building is the way to go for quality, greenness, sound attenuation, and other reasons such as staging and building the project in the middle of downtown Lafayette.

Mr. Panek said they reviewed the settlement agreement; the language talks about the general footprint, elevations, site plan and plaza dimensions, and there were questions about consistency and inconsistency, but they did not know the definition of the word, "general" and hoped that by the end of the presentation they could make the Commissioners and Councilmembers feel that rather than having differences with staff and being inconsistent with 2005, that they either are or not committed to being consistent with certain modifications.

He said the economic viability is always difficult; the issue of the restaurant, impacts on parking, and being able to buy the land and build a project. They have also conducted a market analysis and the parking garage will be discussed more. They will build a mechanically ventilated garage, cannot meet all of the standards or desires as stated in the settlement agreement, such that they cannot address the southern elevation properly and cannot get the BART walkway grades to work right, or the plaza grades to work right. He said 20 people worked diligently on the project and there were 11 iterations of the plan, (10 plus 10A—a slip sheet in the materials, which is in response to initial comments from staff).

Mr. Panek said the 2005 proposal provided a lot of due diligence, information and history. They had additional survey information so that the settlement agreement talked about the project next door and heights. They knew exactly what the height parameters were, which also affected decisions about placement of podium plazas, the depth of the parking garage and walkways around the building, especially the BART pathway. Regarding the geotechnical investigation, they dug test pits on the site and evidently the City has extremely expansive soils that are almost traditional here. They did some structural calculations and something they had not considered or known before is that the building needs to be founded on a pile foundation. They will need to drill piles, inject concrete and build soil columns up so they can build the parking garage, which costs about $1 million. At the same time, they investigated the groundwater issue which they knew about but had not yet gotten into. It is a relatively simple system to install at about $750,000. It will not be a burden to the HOA but it must go in to make the project sound. Also, with a mechanically ventilated garage, with constraints of height, grade, geotechnical and alignment of the southern elevation, they cannot get a good-looking southern elevation.

Regarding economic viability, they have developed 8 condominium projects to date around the Bay Area; Fremont, Milpitas and San Jose. The floor plans in this project are those developed which are market-proven and ones that Heller Manus worked with the ConnexTech system in putting together, which are structurally sound. The market analysis revealed a more mature,

wealthier, experienced move-down buyer with a desire for 2 and 3 bedroom units and floor plans from 1,000 to 1,600 square feet. Their product mix addresses the market preferences as they understood. He said in today's market, the project does not work; however, if they move forward in the approval process, given the entitlements, plan reviews, and other work, the project will actually start in about 3 years, with 7 months needed just to build the parking garage.

Mr. Panek said in addressing staff concerns there is a massing issue along the northeast corner of the building where they have eliminated two of the premium three-bedroom units on the fifth level, which is shown in iteration 10A. There is the issue of the oak tree, they are committed to honoring its drip line and their analysis shows that it would probably result in a loss of 4-5 units. Therefore, in looking ahead at what an application might look like were they to file one, they would go from an 89-unit building to an 82 to 83-unit building to meet constraints. He said they have been in contact with staff, are proposing to eliminate the two, three-bedroom units on the northeast corner by BART so it would be exactly the same as the 2005 plan. The incremental loss is huge, but they are trying to get to the consistency the City is looking for.

They have provided parking of one space per bedroom not to exceed two spaces per unit. The mechanically ventilated garage addresses the southern elevation architectural issues, and Mr. Smith will talk about providing a sculpture arcade along the southern area for the pedestrian experience and also to display art, which will be an integral part of the project. He said Ms. Srivatsa discussed the main entry and foyer on the southern elevation; he noted that the previous design of the project had no front door or entry, and they discussed the need for an entry, which has done a lot to enhance the project.

He said the biggest disagreement with staff is that they feel what they have done to the southern elevation is far superior to what was shown in the 2005 plans. In their reasoning for this meeting, they saw comments, held discussion, they are committed to moving the building outside of the oak tree, they are in the 6-9 foot area and can work through the building design issue, and this would also provide a greater setback from the BART pathway and walkway on the edge of the site. They are confident with the layout for their parking lot and will work with City staff and its parking engineer on it. The reduction in the number of units will also reduce the amount of parking required, but they did meet the requirements for the 89 units. There were also questions from DRC members on the western elevation issues and they believe these have been addressed. Similarly, they are committed to using siding, limiting the use of stucco and work through how this is applied through the DRC. He said there is a lot of work put into the project from 2005 up to today, and probably the biggest disagreement from their perspective is again, the southern elevation. Otherwise, they have either made changes or are committed to making the changes.

Jeffrey Heller, Heller Manus, said the City's plan contemplated more density at the BART station and has for awhile. He thinks it needs to be underscored that we all must save the planet for our kids and for their kids, and transit-based development is one of the most important things going on worldwide in planning. He said the site is right next to the BART station and by creating a project with appropriate density, it eliminates people using their cars substantially, eliminates sprawl and they are consistent with the intent of the plan and agreement, and the project should be as appropriate to the spirit of sustainability as it can.

He reviewed the site, stating the parking lot is used for people to commute, the project harmonizes in scale to the existing project east of it, they have refined the project after comments received from staff, it harmonizes in scale the other tower elements, it helps define the unique walkway experience and channel of the creek which is important to create a visually vibrant center for the area. The building fronts on the back, so there is a double-sided parking lot element; he

described the creek having a prominent face to BART. In looking at the hills, the building is down from the freeway in a pocket. On the west, long term development may occur, but one cannot see the west elevation of the building unless someone trespasses on the other property.

Mr. Heller described the building as a C-shaped plan which came from a lot of dialogue long ago; it visually expands the sense of openness. He said it is an expansive feel, the parking is mostly underground and completely underground on the BART side and the arcade and they architecturally designed it so that the parking essentially disappears from site. The buildings step from the east side up to the west consistent with planning direction. The southern elevation relates to the existing one and he described how it steps down to the creek, presenting the elevation looking westward. On the north facing BART, the elevation is fairly short and is a lowered element. He acknowledged pulling back the drip line for the oak tree, said lowering the area would eliminate a couple of units, and he presented the back side elevation.

Mayor Tatzin questioned and confirmed with Mr. Heller that the version he presented was after the two units were eliminated on the top floor. Mr. Heller said the important thing is to look at the composition and said they stay below the existing building at every step. In terms of visual fit, he said it will not push any boundaries from any of the existing heights.

Mr. Heller said on the west elevation, there was a comment about a stepping they had which was done for a number of reasons, mostly due to viability and having it be more constructive. He described the portion of stepping; stating the advantage is that it now has a landscape deck which is as good if not better than what it was. In addition, it has more ability to articulate the building in a similar manner in going around the building. He presented the south elevation, arcade element which has an open feel and pleasant walking off of the path, and in response to materials comments, they begin with a rough, articulated stone base, going to a siding material with patterning and rustication which also steps in response to the building form. And, at the top in concert with the detail of the building, they would do the smoothest material. They have adopted elements of dormers to bring the roof into a nice encompassing form that makes everything feel like it is within the roof element. Regarding the notch, they feel strongly that it is better the way it is; 7 feet wider or now at 27 feet.

Mr. Heller described the creek side area and the pulling back for the oak tree, and he reiterated that another element was already pulled back from the earlier 2005 plan. He noted the same elevation materials would be used on the north side, a stepped articulated surface and a smoother surface at the top.

Bill Smith, Smith and Smith, said the vision of the landscape is to respect and create additional community open space and provide pedestrian connectivity and feature site amenities. This was envisioned both for the BART specific plan as well as in many of the previous proposals discussing the creek and the common open space that is the bridge between all of the other phases of the project. Their goals are to retain and enhance the creek side oak woodland park landscape setting and atmosphere in a pedestrian environment, enhance the pedestrian path experience as a sculpture park with a new overlook, a gathering plaza, and an open air arcade gallery, to enliven the southern elevation and to integrate site topography and amenities with building architecture and site features and uses to integrate the perimeter landscape treatment. They propose a landscape buffering and screening along the west, north and south project edges, propose to contribute $100,000 for offsite improvements earmarked for the BART pathway and project intersection, to comply with the City's public art ordinance to be featured in the community open spaces, and for the enjoyment of residents to provide welcoming and secure landscape entrances and terraces for common and individual use. He said the landscape design is

challenging because the building is large with existing uses and open spaces. The landscape design borrows inspiration from the character of the creek in the oak woodland and landscape environment.

The Specific Plan talked a great deal about the Happy Valley Creek community open spaces and they are identified by a paved area in cobble that the City has already used, which is continued to identify all public open space areas, to embrace the City's light standards along the existing walkway, using sympathetic and natural materials for the creekside and oak woodland setting such as boulders, decomposed granite, low landscaped walls, and working with the topography, creating a new overlook over the common open space area.

Mr. Smith said the plant material would be an extension of the oak, buckeye and toyon which would be brought over and incorporated into the space. The open air arcade is now the area considered as part of the open space environment where the front entrance area is considered more as private, open space landscaped areas. So, the planting in this area would be more of a Mediterranean landscape. At the western perimeter, street trees are on grade and they would have other smaller terraces. To the north would be an extension of the oak woodland. The resident podium would be made more formal; it consists of flagstone paving, decorative low level lighting, low walls, raised garden beds, and trees seen in gardens. He presented cross sections showing more of the public open space, and he described the building setback, planted areas, and individual decks. On the south overlook, he pointed out where the BART path ends where there is a plaza, and at the lobby section, he pointed out the open air section with planters which will have Mediterranean plantings. The larger overall space shows private open space, the new overlook as a central feature between the north and south areas, the larger oak tree, the path which follows the same alignment and grade, and the creek as it has been redeveloped over the years.

Mr. Heller reviewed the photo montages, said the project is consistent with what was done in 2005 and presented the views up and down Mt. Diablo Boulevard. He felt it was important that the project cannot be seen when going up and down Mt. Diablo Boulevard except when standing at the cross streets. The things they discussed are truly up-close experience elements. Mr. Heller displayed the 20 foot wide slot and described how the open spaces of the building were experienced. He presented the original elevation, the stair going up, the overlap of the buildings and the open path, and bridge elements. He presented an overlay of the old plan and said the new opening is to the east and wider and more to the center so that the elevation of the original building was actually longer than the current plan. Therefore, elements are more balanced in the way they are broken up as well. They believed it has some superior aspects.

Mr. Heller said lastly, when they go back for dialogue about details, they have taken and modified visually the entry as an option. He emphasized that they do not design by bean counting but in a holistic way, and he believes the overall plan is an improved plan. They are amenable to looking at the parking details, siding, elevations and details in moving forward, but feel the building is in a good place in terms of what it should be for this site.

David Bowie, representing LRP, believed there were interesting factors raised by Councilmembers and Commissioners at this meeting; what is the purpose of the settlement agreement and how do you define economic viability. Interestingly, currently the project is not an economically viable plan but one that has been done to meet City expectations, to be of a high quality product presentation, and it is the hope and anticipation that the market will improve in a few years when they will be able to make some money on the project. From LRP's standpoint, there is a slightly different perspective—they have a currently existing approved plan for the site which is for an office building project that has been processed through plan check and building

permits are available. The purpose of the settlement agreement is to try and come up with a project that LRP and the City desires; a residential project that appears to be a higher and better use of this excellent location. With BART there, a transit village approach can be taken which results in a reduction of the carbon footprint, a higher density, and adds to the vitality of the downtown by introducing more residents into the downtown. What they have attempted to do is come up with a project that will satisfy the City and economic viability concerns, but they already have a project. From LRP's standpoint, the economic viability issue is answered by recovering at least as much from a land residual value standpoint from a residential project as they can for the already-approved project.

He said Ms. Srivatsa's report provided a good history of the project summarizing the issues, but it did not do so in great detail. He reminded the group that LRP has been involved in development of this site in excess of 11 years. The idea was that they were ready to move forward with their already-approved project, but if they do an alternative residential project, that the project be streamlined because of the tremendous amount of money which has been spent.

Mr. Bowie said in addition, everybody favors the residential alternative as the highest and best use of the property and the best use for the community. In this instance, the 2005 submittal found great favor with the Council and others in Lafayette, which was used as a template. So, if they come up with something consistent in terms of 2005 presentation, then it is something that apparently everybody would be able to live with which was the basis for moving forward with this. The original 2005 plan template included many attributes of the projects, which rendered the project economically unviable and was determined by his firm and Libby Seifel of Seifel Consulting. As a result, they came out of the process that says, make the 2005 plan a reality, but at the same time, take out costly elements while still being able to build. When the conceptual plans for 2005 were done, no one was certain whether or not the plan could be constructed. And KB Homes has addressed the issue of whether or not this is realistic. The plan before the group has been vetted to a point where they can truly say it can actually be constructed, which he felt was a huge point.

Regarding its consistency with the 2005 plan in general, he felt the original submittal was consistent with the 2005 plan, but LRP and KB Homes have done adaptations of the original 2009 submittal; the Plan 10 Submittal. They have taken it without Ms. Srivatsa's comments and questioned whether or not they could still live with modifications of the plan to incorporate Ms. Srivatsa's comments to get to the point of moving forward. What is remarkable is that in all respects, Ms. Srivatsa's comments are such that this group is willing to incorporate modifications of the 2009 plan, which are the cut sheets for Plan 10A before the group. He said admittedly, some of it is not fully addressed but worked out in context with the DRC and Planning Commission.

They want to work out details of the oak tree, setback, southern elevation, but what is being heard this evening is that this is a project that this group has planned to make a reality consistent with all of Ms. Srivatsa's comments. There is only one which remains an issue; the southern elevation. Interestingly, the gap or distance of the building on the southern elevation, it was 20 feet in 2005. In the 2009 plan, it is now a gap of 27 feet. The building is offset and the depth of the 2005 plan was about 56 feet; the depth in the current plan is about 30 feet, so it is 7 feet wider and about 30 feet less in depth, but still offset. In looking at the positioning of the project, not much is seen of the building because there is other development in its place. In addition, landscaping will mitigate any impacts.

He believes that the agreement to move the two, three-bedroom units at the fifth floor was a significant concession which would have fetched a premium price and which also shows the motivation behind the project. They want to work with the City and he believes it is consistent with the 2005 plan. He noted Heller Manus was the architect selected in the settlement agreement with a view toward making the plan consistent in all respects. What is telling is that the plan is consistent, it has evolved from the earlier version, and exactly what Heller Manus would like to present to the City and one which is not constrained by bean counters.

Mayor Tatzin said at some time ago, the Council appointed a subcommittee to review the project and he wanted to allow the subcommittee to provide a report. He then wanted to take questions from the Commissions first and then the Council regarding the presentation, public comment and staff comment and response, applicant final responses, and then return for Commission and then Council deliberation. He recognized they would not finish by 7:00 p.m. but felt it was important to address the item thoroughly.

Councilmember Federighi said the subcommittee was responsible for doing negotiations on the settlement and development agreements. They also superficially reviewed plan 10A and were briefed by staff's concerns about the lack of consistency with the settlement agreement. Frankly, they agreed with staff—that Plan 10 was not consistent with the settlement agreement in a number of areas. She is pleased to see many changes have been made in terms of insufficient parking, an enclosed area is now open that required additional parking, there is a desire to move the building out of the drip line and the fifth story has been cut back. However, she wanted to listen to other comments, but felt the applicants had definitely made changes in the right direction.

Councilmember Anderson reported that when putting the process together and negotiating it with LRP, their consistent message was a desire to get a ""thumbs up"" or "thumbs down" reading early on in the process so that they not be strung along, spending a lot of money and time. They questioned if the Commissions and Council could come together as a group and provide a true indication about the project so they could make a decision as to whether or not they could pursue it or not. He knows people are chafing at the process because it is not normal, but he encouraged everyone to be as brutal as possible and this is the applicant's best opportunity to get a clear reading as to whether this is something they should pursue or not. Personally, he appreciated the work and efforts that have gone into it, said the subcommittee and applicants have done a good job that's worthy of the group's attention.

Commission/Council Questions:

Commissioner Lee questioned how the community gathering space works, what relationship it has with other spaces like the art gallery, the amphitheatre, the lobby, and what is the intended use. He believed that reducing the size of the project in order to pull back away from the oak will cause issues with the parking garage which underlies the edge of the building and the face of it is the greatest risk. He questioned how this will affect parking counts. He questioned the ConnexTech system and whether it in any way constrained the ability to provide more articulation of the exterior elevations.

Commissioner Chastain felt it was important to clarify that once the structure changes; it modulates size, particularly along the west elevations.

Commissioner Maggio questioned main access and circulation by residents to terraces on the south side and questioned whether or not the terraces were private. She said in the presentation, a comment was made that the building is green and she questioned how this was so. She also

questioned how, since the developer has built projects in San Jose and Milpitas, how they would make this particular project unique for Lafayette.

Commissioner Hertel said while at not a great level of detail, there appears to be some inconsistency between the floor plans and the building elevations, particularly shadow lines showing up on the western façade that are not seen in the floor plan. He questioned whether they were looking at more projections moving closer to property lines or would there be a cutting back of the building. He also said on the western façade starting at the north and coming back at the first one-bedroom unit, there is a balcony that appears to be tangent to the property line. He asked if it was a zero lot line for the deck area proposed. Both of his questions encompass an idea of animation, cutting back, and in's and out's of the elevation. They appear to be very superficial, and he asked for a discussion of what those are and how animated the building actually is.

Councilmember Federighi said an issue raised earlier was a comparison of mass and that the mass in the 2005 plan was 111,000 square feet and this was 120,000 square feet. She questioned the difference of the Plan 10 as opposed to Plan 10A modified. Mr. Heller said it was smaller. Since there will be floor plans affected, they have not gone to that level of planning, but it were getting close to 1,450 square feet for the 2 and 3 bedroom units, the studio apartments were 700 square feet, and there might be a 5,000 square foot differential.

Councilmember Anduri said he was having difficulty understanding the landscape plan and how the new plaza relates. He questioned if the area shown as open space was under the arcade or did it go through the bottom of the tower.

Councilmember Anderson said he was interested in seeing how this is going to connect the BART path through or past the parking lot down to Mt. Diablo Boulevard. The City has always looked at this as a phased parcel, but this is a major entry and the connection has never been shown in any plan. He felt this must be resolved and of high importance.

Commissioner Mitchell said in response to the applicant's square footage comments, he was under the impression that 2005 was 111,000 square feet of residential space and that the 2009 was 123,740 square feet. Mr. Heller said he believed it was 121,000 square feet and it might be reduced down to 115,000 or 116,000. He then confirmed with Mr. Heller that Plan 10 was the 123,750, and the 120,000 scheme would be with the modifications further away, and they are shooting for 120,000 square feet.

Mayor Tatzin said he understands where the arcade is but was curious as to what would be done to make it a lively space as opposed to a dead space that people walk through only when it's raining or they're trying to stay in the shade. He agreed with many questions asked thus far with regard to thinking through the best way to do the western articulation. Admittedly, the reduction in units could reduce the number of parking spaces but it may reduce the availability of parking, as well.

Ray Panek said KB Homes has adopted a green policy. Almost every home meets an energy star requirement and in northern California they carry it a little further. Their corporation has been working with California Build It Green and they will be building a subdivision in southern San Jose that will be green point-rated and certified. Energy Star is a big step in green point rating which are mainly appliances. However, green point rating is site design, landscaping, recycling, material types, they go through a green point rated checklist, they have a number of people who have

completed green point training and they are incorporating this into a lot of their subdivisions moving forward. He noted that the Redwood Shores subdivision will similarly be green point rated.

Mr. Panek said the green point rating aspect of this project tied into energy efficiency and recycling, mainly because the structural components of the building will be manufactured and fabricated in a controlled environment. It is quite an impressive facility to see this. So, while it may take 7 months to build the parking garage, the podium and structural separation slab, they probably can put a structural skeleton up in about 6 weeks. This cuts back on waste, it is pre-fabricated, and there is not a lot of room for staging, so they bring it out and put it in which cuts down on interferences. When talking about green for this project, they range from construction to types of units they will be providing. Also, the structural system provides for a lightweight concrete and it is helpful for them because it provides a lot of sound attenuation, whereas a wood frame building becomes more problematic.

Mayor Tatzin said there was a question about whether the ConnexTech system has limitations on the architectural design. Mr. Panek said the building is laid out using their tested floor plans in concert with the structural system and it does not prevent them from adding further architectural articulation.

Mr. Heller said the ConnexTech system is like a tinker toy system, it does have some limitations in span but it has a lot of flexibility in terms of range of spans, and can cantilever 7 feet. So there is a significant amount of movement in the façade they can create. When looking at the west façade, what may be misleading is the plan at the deck level does not show the balcony structure so much, but on the upper level it is there. He said there will be an entire series of significant bays and the southern part of the building projects out completely. So, it is something they would work on in more detail in Design Review, but there is a lot of movement in the system. He said it was not shown on the plan because the balcony becomes part of the terrace on the terrace level plan. They have worked with the ConnexTech people and they will ensure they get what they want from the design, as well as what the system can do.

Commissioner Maggio questioned the ConnexTech material and asked where it was fabricated. Mr. Heller said ConnexTech is a metal structural system as opposed to building a building out of wood frame and it is fabricated in Hayward. It is a patented metal connection joint system, using high beams and steel frames. It has advantages for being better for building centers. It is also fireproof material and is a very good building product.

Commissioner Chastain clarified that it is structural system and that typically one cannot get a wood cantilever without going to very heavy beams, so there is a lot of flexibility with it.

Mr. Heller said they can return with programming for the open space, it goes clear under the tower, is meant to be more than just a walkway and they discussed an art gallery. Their firm did a similar theme, although enclosed when they did Hayward City Hall, which was an element that got to a walkway to BART and it became very popular. It came together as an art gallery with community art rotating there all the time.

Mr. Smith said from the landscape/pedestrian point of view, the previous submittal of 2005 the building went right to the property line. He said this is all podium in this area. The zone underneath the tower is about 45-50 feet deep and 45-50 feet wide. This was all infill building in the area. What is interesting about this is, that you will see color of cobble which is the City's cobble in the south portal and which will be continued to show that the entire area is public domain. Therefore, you not only have the nature of the open space, but also the experience of the

up and down, informal, and a little bit more formality and living the architectural elevation of the building base that is pedestrian-friendly. There are garden opportunities with planters, areas for art, tile, wall treatments, or it could be the heritage or civic ideas. They will be working with an artist that will also work with the City as part of the program. The entire area is enlivened and the gathering area is far larger than anything proposed in the past.

Mr. Heller referred to the public/private area, stating there is private space, access comes from the corners of buildings from the lobby, there is a gathering space on every level of the building, there would be controlled access stairs down to the BART station or outside the building, and the rest is intended to be covered space.

Mr. Smith said that between the reduction in upper mass and by pulling the building out of the drip line, they are talking about 7 units, 2 of which are two or three-bedroom units, and it consequently takes a lot of pressure off the planning of the parking structure underneath. They would return with this and work with staff about the circulation within the garage. Connected to this is an urban experience crossing the parking area on Mt. Diablo, and they have always intended to do this.

Councilmember Anderson said he saw the gallery in the last iteration when it was enclosed. He likes the new plan better because it is open, but he was afraid it was not open enough. In some of the elevations, it is hard to find it and it will be important for people to realize it is there and a place they can go there. He was not sure how to do it with the walls, but it might need to have a leg missing on the tower or something and more open. Mr. Smith said they can work on making it a little more transparent and feel inviting in terms of interaction between people.

Commissioner Lovitt said when he saw the original 2005 plan, he saw the gap built between the two buildings as kind of a breakthrough in the design, and he is a little distressed that venting mattered. At some point, he said he would ask for a better understanding of what is done to break up the southern half, which was his main concern.

Mr. Panek said the point he was trying to make before was that an element of the building gets shorter that it was before. The façade is longer because the gap has gotten wider and also the gap has moved eastward to be a little more central. It is 30 feet deep which is significant. He presented the old plan and the western part of the building actually overlaps the space. He pointed out the gap and said the building actually steps across and overlaps the eastern part of the building. As one is approaching the building, one does not experience the gap visually per se. When one is in the lot and walking up, the notch is seen at only one point, and it is also private space. He said the real visual experience, although in a plan diagram it looks appealing, the true urban experience is not as good and further west. The stairs did not create a very interesting break, and was rather disruptive. Proportionally, it works better with the elevation, it is wider, and the visual real life impact is basically similar to what it was before. The final element, as an alternative, they can work within the architectural vocabulary to emphasize that break element as the main entry.

Mayor Tatzin said given that there has been some discussion about economic viability; he questioned the economic viability to redo the southern façade influence. Mr. Panek said the fundamental issue is that making the building one entity, it significantly raises the constructability, planning, efficiency, reality, and the internal circulation of the whole complex.

Mr. Heller agreed and said it also provided an entry and lobby for the type of customers they are expecting to attract to the building. They need to have a lobby element; the open air, sort of stair-connecting-buildings which is rather inconvenient and he thinks it will be a tough sell. Instead of

creating an urban community they would be dividing it so one would never interact. He said they also get storage space on upper floors which can be provided to residents, and they create an interior lobby that connects nicely to the exterior plaza for residents.

Mr. Panek questioned that as an urban element, the composition of this can be much more interesting and compelling when looking at it coming up from Mt. Diablo Blvd. The sense of openness overplays in people's minds and would not have the feel that there is a direct break in two separate buildings.

Commissioner Maggio referred to the elevation slide and asked how much further back from the entry was the taller element. Mr. Panek said the part is 30 feet from the façade from the front. She felt it was a little misleading having it lightened and not colored in. Mr. Panek said he almost always has to show elevations, but they are not the way one sees buildings in reality. If they color it in, it should be colored lighter because otherwise, it would look like an uninterrupted wall. He felt it was much better to see in 3D than in 2D; 30-35 feet is a significant amount and most likely bigger than the Sequoia Room.

Commissioner Marquand said it is not like the group is trying to decide whether it will be perceived as one single sea-shaped tower or two buildings like it was originally. He questioned that if they want the round building, they would perceive it as a single tower. Mr. Panek said in walking around the building, one sees it as a series of elements. He referred to the C plan and said it is quite three dimensional—it is one building but it is broken down into a couple of elements. When seen obliquely, there will be a sense of separation whether it is the through-part or not. Also, when going along the path, a façade will be experienced and then the notch and this was one of the driving forces of the City. He said it is one building physically, but once you go around the building, you see and feel the pieces. The C shape courtyard from day 1 was a key element that held the project together. In relating to the building next door that is a continuous façade all along, and it will break down much more than the existing building does.

Public Comments:

GEORGE WILSON, acoustical consultant, said one element is the fact that the building is very close to Highway 24 and will be located in a very high noise background area. The windows and walls will have to have very good sound insulation, which attributes to a green building. High sound insulation windows are also high thermal insulation. It concerns him talking about removing stucco and using siding because the siding will not have the sound insulation stucco will have. Regarding the repeated comments about the lightweight concrete, there is nothing unique about steel frame building as far as the use of lightweight concrete. Whether or not it gives good sound insulation between units depends entirely on how they frame it at the party walls and what kind of ceiling they have because lightweight concrete could be used as well as within a wood frame construction.

LYNN HIDEN said the mass, height, and sheer packing of the project looks uncomfortably like the tenements in New York when the freeway was torn down, but supported the use and look of the rock.

ELLIOT HUDSON said he was speaking to this project and also to the larger downtown plan of the City because there are many citizens that want to keep Lafayette's small town character. He used to be the partner of a 25,000 square foot building and he knows exactly how big the project is, and believes it to be massive. It will feel canyon-like when walking between this building at this height and the next building. He agrees it is set back which is an advantage but at the same time,

if built, it will change the character of the town. His understanding is that the area is still subject to a specific plan limited to three stories. He reminded everyone about the housing study from HCD that talked about how high density housing in many cities is now two and three stories instead of five stories, and it is not something he would like to see in Lafayette. He regrets it if it is so far long that it cannot be undone and hoped that in future processes, the impact of what the project will do is remembered but hoped it could be avoided. The office building is three stories and while he understands the desire to have housing, he would trade this building over to something with less mass and height. He very much agrees with Commissioner Maggio in her comments about how you will see the façade from the intersection of Mt. Diablo Boulevard. To some extent it is screened from buildings in front but the mass will be seen. He heard the word, "urban" about six times in the presentation and did not believe Lafayette was an urban community.

GUY ATWOOD said Lafayette has never had a "fort" and this is what the project reminds him of. He felt the building was far too tall and massive and something should be done about it. He did not understand why it was being compared to a building that was never approved. Regarding the economic viability of the project, it is not even an issue. The project is extremely viable and the Woodbury project approved was 42 feet high. He asked how the open space is calculated because if the entire creek area or a major portion of it, he felt it was wrong. When the project was originally looked at it was in three parts. He said the area along the street and the use of the creek should not be considered as a way of getting open space and that area should not be used three times. Also, the back side of the building bothers him; one thing they did on the Planning Commission years ago was push buildings down. Reducing the height opens up the views in the back. He also questioned where the parking for guests is because the City's retail base will be destroyed if people park in the commercial district. He said one of the things said is that the building cannot be seen from different points, but when the General Plan was done, they wanted to be able to see the hills behind these properties from the intersections. He said they do not want to see a great wall but something with a view and what will be seen now with this building, the apartments, and the other building is one giant wall all the way across, so all downtown views are lost in the City. He questioned how people would be kept out of the creek and questioned if there was a way to get across the creek as well, as a bridge might be helpful. He also questioned if there was a way to provide privacy for the stores if they wanted to put in tables in the back to be shielded from the huge condominiums. He questioned and confirmed with Mayor Tatzin that the pathway would be lit at night. He said he also did not hear anything about architectural compatibility with the apartments across the way and asked someone to explain to the community about how we could have an approved project of this size without any public input or process, which he felt was wrong and shameful.

MARIE BLITZ questioned timeline in relation to what the Council and Commission is being asked to do, said the developers are bringing the proposal in a so-called preliminary process invented by the settlement and development agreement, and even though a lot of discussion has been heard about a series of modifications and they want to work with staff, DRC, Planning Commission and the Council to resolve a long list of details and questions, there is a lot to do, which takes time if it is going to be thoroughly reviewed. The problem with the settlement agreement terms is that if the Council tonight gives their "thumbs up" to the pre-application, the City will be locked into a tight timeline at each of the next levels for working out the myriad of details. When the plans return and the EIR piece is put together, DRC will have 30 days to calendar a meeting, 45 days beyond that to make a decision, with the Planning Commission having the same cycle, which is not much time. It is a huge building for Lafayette, there is a specific plan for the BART block that pre-dated the development agreement by more than 10 years which is still in place, and the proposal is not consistent with that plan in a host of ways which are highlighted in the staff report. She said view sheds does not mean the view seen between the crack of the building, but of much broader

content. As noted in the staff report, if the 10 year old development agreement actually freezes in place those ordinances and rules for purposes of analyzing the proposal, then the group does not have in front of them an analysis of how this proposal fits that General Plan or those rules and regulations that are in place, but rather a partial analysis of how it measures up to the BART specific plan and the assumption that the developer will come in with wide-ranging amendments to that specific plan if the "thumbs up" are given. The request on the application at this pre-application stage is extremely preliminary, too premature, especially given all of the changes proposed by the developer.

Mayor Tatzin confirmed there were no staff comments, questions or comments of staff or the applicants.

Commissioner Comments:

Commissioner Lee said he liked the presentation, said there is a lot to comment on, he likes the idea that the developer is talking about a green project, hoped that it could be up to 80 points, and the fact that transit villages make huge concessions on the parking side, then there should be some zip cars that are shared amongst people or other alternatives available. He was less inclined to pressure parking counts because the idea is to change our way of thinking about how people get around and not get into a car and possibly making Mt. Diablo more pedestrian-friendly, as well. The building itself has some issues and he could guarantee that people in town know the difference between a building that looks like its two buildings with an opening and one that does not; however, he did not believe this was too important. The bigger aspect is the experience along the creek which needs the relief so one is not walking down the Grand Canyon or the "fort" of Lafayette. He was disappointed that the lobby does not "plug" into the street by the driveway, which he felt was a missed opportunity. He thinks some thought and consideration should be given with these two pieces because he felt they did not align. Regarding the issue about how the building finishes, he felt the entire process was organizing itself around a building that was designed without having played the right games with the weights of the elements and pieces as you form the base of this building. There is still a sliding glass door stacked under a stack of 6x8 doors and the group cannot get the sense that a base is a base, and he was not sure the top was really a top. They have made some material changes and as rich as they look on a 3x4 board it is not the same when there is 120,000 square feet of building and there is the need to break down its mass. From a design review perspective, he will be looking for somebody to show him more richness in detail and in a way that makes the building look better. He voiced concern about the art gallery and lack of change of penetration as you hit the tower and said the tower just looks like another part of the building. He wants to see something stronger such as changing the railing from a light railing to an opaque railing, or make smaller openings in railings, or changing the sizes of railings in the rise to the tower. He said those he has seen in architecture books are those which should occur. He likes the fact that they have bracketed the creek with some elements that will be fairly innocuous later on. The area between Baja Fresh and AT&T store and never see a tower up 60-70 feet up into the air and what is important is what happens at the base. The art gallery seems like a left over piece where you cannot park cars in it. It does not have an opening; he is afraid it will never get used and is not a good place to put art especially given its access to weather conditions. He said he was looking for softness in the courtyard; when getting to the opening of the sea, there is a harsh edge right not where the podium ends. He said they said the same thing about the Woodbury project, such that it does not look like we are not burying the structure underneath. The stairs might need to be flared or loosened up a bit so they behave in a way that is organic to the space to the east.

Commissioner Lee referred to the top and the progression from the stone to the rusticated finishes to a smoother finish will be a mistake. The top needs more weight and right now it is very light and what is needed is something heavier and sticks to the ground better.

Commissioner Cleaver thanked the applicants for their work in addressing comments from the City and felt staff's review was perfect and provides a nice way of looking at things. He feels the building is a little big as it sits on the site. The trees northeast and northwest of it need to be accommodated better. He agreed that the gallery does not make much sense and part of him wants to get rid of the balconies on the south side and slide the entire building closer to the property line, allowing for more space somewhere else. He thinks the plan graphics of the spiraling jetty in the open space is nice, but he would rather have significant planting and not a series of walls. The development currently suffers from the fact that all of the structure pushes to the edges and needs to be planned a little bit better for there actually being a significant open space where a couple of big trees can come in, where the actual void in the building can be absorbed by planting. This contrast will make a better overall building mass. The current buildings look extremely flat right now and the roofs look extremely flat on the west and north. The south elevation has some articulation, and he would like this to occur in other spots.

Commissioner Marquand said he supported Commissioner comments, thanked staff for the chronology, thinks this is a major City planning level project in the sense that it goes up a number of feet that no other surrounding building goes up, even though it does achieve the same height next door. Some graphics the applicant provides in the future should show a larger context and the height of the building to those things around it, and felt claustrophobic in the way the project is being analyzed. He said he did not know much about the 2005 plan, but likes the idea of density near the BART Station; it is an excellent opportunity for density and he much prefers residential over commercial. However, he was a little deflated when he saw the 2005 plan simply because the current proposal is so much more generic than the 2005 plan. He was more concerned with the project's monolithic massing which comes through in community comments, believes other commissioners have elaborated well about the care and detailing, as well as the idea that the building has a face, a middle section and a top, and a lot is being asked to go up to this number of stories. He would like to see the best building that Heller Manus has done on this spot because he believes it is a big concession on the City's part. He thinks four stories would seem a lot nicer or possibly play with a mix of four and five stories in different ways. Regarding the much discussed art gallery, he feels the space is nice. In terms of getting relief from the wall coming down, people will be used to a more spacious drive-a-way along the Mt. Diablo commercial area and he thinks that the big shadow line would be helpful in how it is worked out. Other than that, he said he appreciates this being proposed as a residential use.

Commissioner Hertel said he agrees with staff fundamentally that this is the correct position in Lafayette to do such a project of this mass and have the transit corridor as the core of the downtown, and the ship sailed on a better plan 20 years ago at another recession. He acknowledged the mixed use development and said he sees it best used as housing. His difficulty overall is that he believes the project strains at the edges. Re-calculation can be done on a net basis, but it strains at the edge of the parking, at the creek edge, and at the north edge of the BART parking lot. Ironically, the area where the building steps back is the west edge where no one even enjoys it or acknowledges that sort of cutback. It is a great benefit to the residents who enjoy the terrace which can only be planted with trees that can survive in a small planter sitting on top of the terrace and not in dirt.

Regarding the south elevation, he finds himself still agonizing over the lack of connection. He wants to go back to the whole concept of the BART Block mixed use, and this is the last

opportunity to mix the uses. He knows retail is not viable, live/work is not viable, nothing is economically viable except a dead arcade that is shallow, goes nowhere, starts nowhere and forces people under a 5-story building which seems oppressive in its height and weight, and he questioned why he would want to go underneath it. He was not horribly pleased with the solution; he understands the solution architecturally—it is being pushed right to the edge. He is worried about the depth of articulation of the building façade; the south elevation has a two foot shift and Juliet balconies, so there is not tremendous shadow line, animation, and also, repetitive demonstration. This worries him about this footprint moving forward. The plan needs deductive changes in order to make it successful architecturally and it needs bigger movements in the building massing. Regarding ConnexTech, the reason it is being used is because one cannot push up five stories of wood frame by the Building Code. He said with the building next door, they had a schematic plan, it went to design development, things got added to the building that did not get deducted, and it stressed even more at the side. His biggest concern is how the public area fits under the building. He sees a sheer wall blocking and killing two sides of it and he is worried about how this would play out. Other than that, he loves the project, the idea, and he really wants something that has significant mass and importance to be in this town, but feels it needs some work.

Commissioner Mitchell believes there were rules developed for joint meetings and he hoped that the group could take more than 2 hours in the future. He said some of the numbers have changed since they saw the staff report, but he supports staff's analysis in showing the non-compliance between the 2005 and 2009 plans. It is important to look at the relationship between what is presented in the BART Block Specific Plan because eventually the City will get an amendment out of this, so the City should look at the relationship to it. BART Block Specific Plan calls for a 3-story height limit. This is 5 stories--or depending upon how one reads the Municipal Code--6 stories high. Some 3-story buildings higher than 35 feet are allowed in the specific plan and this is 57 to 67 feet.

Regarding Commissioner Hertel's comments and the number of units and density, it is a 1.47 acre parcel, so at 76 units, there are about 50 units per acre. The 2009 plan had 89 units which are about 60 units per acre. But, importantly, the area of the creek setback is the undevelopable area leaving about 1.09 acres which pushes the density up a lot to about 81 units per acre. The same applicant put forward a plan in 2004 for a 3- and 4-story building which was 75,317 square feet of living area. The 2005 plan goes from 75,000 to 111,000; the 2009 plan goes to 123,000. So, the proposals got bigger.

Commissioner Mitchell pointed out that the City is working on a downtown specific plan and he believes the City will get an amendment to the BART Block Specific Plan. It looks like this is going in the direction of 3 and 4 stories and is coincidentally what was proposed in the 2004 submittal of 75,000 square feet. Mr. Bowie, in his conclusion, stated that they do have a viable project, an approved office building, and that building is 100% in compliance with the BART Block Specific Plan and has a useable area of less than 30,000 square feet of office with lower heights. In conclusion, he would go in the ""thumbs down"" direction because he does not see the relationship to the BART Block Specific Plan sufficiently close.

Commissioner Maggio said she would like to see Phase III completed, she would like to see multi-family housing and thinks it would have a great opportunity at the BART station. She believes the market will come back in a few years and with that in mind, she challenged the applicant to do something significantly greener. She felt the metal structure was a good engineering decision, the energy star appliances are good for the consumer, but neither is really building green. There are lots of things one can do without expending any more money to make the environment much

friendlier to habitants inside. She said simple things like creating more daylight getting into the interior of the apartments will reduce gas and electricity, and could downsize the HVAC system and saving money. She questioned how this development for Lafayette would be different from Milpitas and San Jose, and did not receive an answer, and she challenged the applicants to make it different from those communities. This relates to what Commission Lee had said about the appropriateness of building materials, and she felt Design Review could assist with this.

Commissioner Ateljevich said she appreciates the fact that the applicant said they would step back the back part of the building that is near the oak tree, but feels that overall the height and bulk of the building are too big for Lafayette, and she did not believe 5 stories was needed. She thinks the south elevation is quite boring and otherwise agreed with Commissioner Lee's comments.

Commissioner Chastain said he gives the project a ""thumbs up"" because it is multi-family development in the right place in town and he supports the use on the site. However, he will have to see things changed before he could approve it. He believes the project is too high in terms of the way the rest of the building is handled. There might be a 5th story if it were set back or if the building itself had more articulation. So, it is not just the height but the fact that it is a nominal understanding of a building. He was asking questions about the structural system because he thinks the applicant can get bigger shifts in the wall plane possibly generating better daylight but also being able to break up the plan. He thinks the C-shaped plan is fine and appropriate, but more transparency at the entry would help with the understanding of the different parts of the building. The entry is built up out of stone as opposed to emphasizing the transparency, which he feels would mitigate the sense of the building being contained. He agreed with comments about the south elevation in terms of articulation and he would be more interested in a more careful understanding of what the top is versus what the bottom is. However, the whole bottom edge has presented itself as a series of after thoughts, which is not sufficient for his approval. This is the public contribution that the building makes to the south edge and he was much more interested in how it relates to the buildings around it and to the uses around it. Also, if the space is truly a community art gallery, he would like to see how this would work; how it would be programmed and maintained. If it were truly a gallery, he might begin to think it is a significant contribution at that edge of an activity, of a public use when people cross the street, but it is not really presented this way and therefore hard to understand how it would actually work. If the space is taken away and made into landscaping, it is a tucking under the building and he did not see how a use could be made there. It could be highly articulated as a place to sit in the sun, drink coffee, or something but now it is not presented that way and until the space is not presented as an afterthought but a true attribute to the public environment, he would not approve it. He said the west elevation is pretty difficult and he would withhold his own judgment until he studies better what the view is from the town. As it stands, it is the largest sea or wall of the project and it is problematic.

Lastly, Commissioner Chastain said the towers are totally without value to him and did not believe the town needed competing towers, as they actually call attention to the height and get in the way of the cascading roofs. He would like trees to be the definition and he thinks the towers do not serve a purpose that has been identified as making something special, and he believes they just make the height more apparent. He would also expect the towers to be removed to allow the building to have a gentler end and just allow that movement into the landscaping space.

Commissioner Lovitt said working on something like this in today's environment takes some foresight. He echoed many comments, completely agrees with the concept and use of the building, does not agree with the height and mass, thought the plan of the past was better and this one presses harder than that and in the end, he would not be able to give it a ""thumbs up"."

Commissioner Hertel said he also saw the entry way as an opportunity for doing a roof deck and he worried that the interior of the C-shaped courtyard will never see the light of day except at high noon. So, this may perhaps given a common area to the residents.

Council Comments:

Councilmember Anderson supported housing at the location. He likes the general concept, felt it could be carved and brought down a bit, but he was not so worried about that. He voiced concern about how this faces the back ends of all the restaurants. There are dumpsters and other things on the back sides of restaurants which would be front yards for the area across the street, and he was not sure how those would relate to each other. He saw the plan when there was an enclosed gallery and he could understand it better. As an arcade like this; however, he felt it was lost in the shadow and he suggested that with the tower removed; this could be a large, open, unfettered, no column space that flows from the outside in. He felt the public space was something the City had labored with for a long time and while they were getting close, the project is not there yet. He said he really likes the public garden, the public/private piece and the center of the "C" but questioned how people would get to the street from BART which he believed was missing and needs work. He felt the City was moving in the right direction and in talking as a subcommittee member with LRP, they expressed a lot of confidence in the DRC and what they could offer to make the building better. If the applicants are willing to consider them, the structure will really be nice and he felt good about the process.

Councilmember Federighi said she also likes the site for housing and thinks it is the appropriate spot for a dense project. She hears real concerns about the height and while she would prefer it lower, she thinks the visual impact of Town Center II has not been height-wise that significant. On the other hand, there have been a number of issues raised tonight and she did not believe there was any way that the consensus is for a ""thumbs up"". She did not believe that given the constricted timeframe that the settlement agreement calls for after a general feeling of ""thumbs up"", there is not enough time available to address all issues. She also shares Councilmember Anderson's feelings about the gallery. When seen, it was enclosed but required extra parking. To solve the parking problem, by keeping it open it leaves it as an after thought. To be useful, it should be opened up more and exactly how that is done she would leave for others to resolve. She hoped the group was not giving up on the idea of housing on the site, but she did not believe the group was ready to give a ""thumbs up"" yet.

Councilmember Anduri said he agrees that this is definitely a place for housing, agrees with the density, and said his concerns relate to the connections to surroundings. He agrees completely with Commissioner Hertel that it crowds the surroundings on just about every side of the building. As an example, on the east façade he has trouble with the hardscape; it makes the building seem much closer and takes away from the path. One of the Commissioners said that should be heavily planted and this needs a softer edge and it is too close to the path. He believes it will be very important to pull back the northeast corner from the oak tree. In terms of the south elevation, he agrees with Commissioner Lee that it would be a real opportunity to do something that lines up with Dewing to tie it altogether. In terms of what that is on the south façade, he did not know. He was also agnostic on the towers. He can see not having the towers might be better if somehow that side sloped down to the creek, which would be important. He thinks the tower on the east is fine and a good element, acknowledged that if there are too many towers it gets trite, and emphasized the open point. Taking away a tower would create more of an open space. He also believes guest parking needs to be addressed.

Mayor Tatzin thinks housing is the preferred use for the site, stating this is probably the lot along with Town Center II where it is appropriate to have the highest density Lafayette will have and he hoped to proceed to the next step. He learned in Town Center Phase I that he should not give suggestions to Design Review and a lot of ideas have been expressed by the Planning Commissioners and DRC members. He also noted that some of what was heard was also in conflict; some people think the towers are an important element, some people think they should be removed. This is a first meeting so some issues will need to be resolved in on-going dialogue. He suggested that if the applicant is interested, the meeting be continued to the Council or Planning Commission's first June meeting at which point the Council asks staff if they could document what they have heard in terms of points raised and have everyone present with the public to comment on that list. Under the settlement agreement procedures, what the City is supposed to do is essentially come up with a list of things that form the basis for subsequent review, along with the EIR requirements and our normal checklist. This is the process recommendation he would give this evening.

Councilmember Anduri said additionally, regarding view sheds, when one is behind the retail building, even now one cannot see the hills in any direction. He did not know what the situation was when down on Mt. Diablo Boulevard at the intersection, but it could be that the three-story building blocks that out. Mayor Tatzin said he looked at the area from the Diablo Foods parking lot and one might have been able to see the tower only because it was the only section of the site that wasn't hidden by the trees that are between you and the site. He appreciates the applicant looking at the visibility comparison of this versus the 2005 plan from the perspective from Mt. Diablo Boulevard and he also encouraged the applicant to determine what that would look like if walking down the BART path toward Mt. Diablo, and how apparent the sense of two buildings was.

Councilmember Federighi questioned whether or not anything would be accomplished by getting together to review the list of concerns raised. She felt it would be more helpful to have a continued meeting with the applicant given the opportunity to address some of the major concerns. Mayor Tatzin said the applicant could do this at the next meeting, he was not sure they would present new renderings or not, and he acknowledged it may take longer. He said the developer has indicated that the project is several years off, so he was not sure about its sense of urgency.

Mr. Panek said he agreed with Councilmember Federighi, said they have contractual issues with the land owners and need to hold discussions with them. He felt it would also be good to have the list prepared and maybe send it around to the group as a whole, including the applicant's team, look at things, and come to agreement in a draft form of what that document states. He said there were a lot of good comments made; some were fully expected and some were not, but if these steps were taken during the summertime, the economy provides them with some time.

Rick Dishnica said he is generally comfortable with the opportunity to continue dialogue and narrow down the approach. He feels there are some issues they are sensitive to and one is the deadline that comes up in May 2010. He requested the group look hard in this next round for a longer period of time for the development agreement and settlement agreement extension, which is essential to work on this path. He said they cannot have that amount of pressure when trying to work toward a point in the future.

Ms. Srivatsa said the development agreement expires May 2010 and this means that the project will have to comply with the current rules and regulations, i.e., the current general plan and the BART Block Specific Plan. Mr. Dishnica said it also requires that a building permit be pulled for an office building, as well.

Mayor Tatzin confirmed with the applicants that this could added to the agenda for some time in late July, and a date can be found for the entire group to meet in the end of June/early July.

6. ADJOURNMENT

ACTION: It was M/S/C (Anderson/Federighi) to adjourn to the Regular City Council / Redevelopment Agency Meeting at 8:20 p.m. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent: Andersson).

APPROVED:

Don Tatzin

Don Tatzin, Mayor

ATTEST:

Joanne Robbins

Joanne Robbins, City Clerk

City of Lafayette
Meeting of the Lafayette City Council
Redevelopment Agency Meeting

MINUTES

Lafayette Community Center – Manzanita Room
500 St. Mary's Road, Lafayette, California

May 26, 2009
7:00 p.m.

1. CALL TO ORDER

Mayor Tatzin called the Regular City Council meeting to order at 8:20 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, Vice Mayor Andersson, Councilmembers Anderson, Anduri and Federighi

Absent: None

Staff: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Tony Coe, Engineering Services Manager; Jennifer Russell, Parks, Trails & Recreation Director; Melanie Donnolly, Acting City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE – led by Mayor Tatzin

4. ADOPTION OF AGENDA

ACTION: It was M/S (Anderson/Andersson) to adopt the agenda. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

5. PUBLIC COMMENTS

GABRIEL FROYMOVICH, Executive Director, Lafayette Taxpayers Association, voiced concern with the State deciding to forcibly borrow money from California cities and asked the City Manager to indicate what residents could be doing to put pressure on politicians to keep this from happening.

Mayor Tatzin noted the City is represented in the Assembly by Nancy Skinner, represented in the Senate by Tom Torlakson and represented by the Governor, and he suggested that all three be contacted.

6. PRESENTATIONS

A. Recognizing Michelle Edmunds for her service on the Parks, Trails & Recreation Commission

Recommendation: Receive and file.

Mayor Tatzin, Councilmembers, staff and the community recognized Michelle Edmunds for her 7 years of service on the Parks, Trails & Recreation Commission and discussed her accomplishments around building the roller hockey and multi-sport rink, the facility award from the California Parks and Recreation Society, the Married with Children School Garden and her photographic abilities. Ms. Edmonds thanked the City for the opportunity to serve.

Convene Redevelopment Agency

ACTION: It was M/S/C (Anderson/Andersson) to convene the Redevelopment Agency Meeting. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

B. Steven Falk, City Manager and Tracy Robinson, Administrative Services Director Budget Workshop – Proposed Budget for FY2009-2010 and Continued Discussion of Lafayette Finance Review Committee Options

Recommendation: Discuss and continue to June 8, 2009 for public hearing and adoption.

City Manager Falk recognized Ms. Robinson for her preparation of the Budget and Work Plan for FY 2009/2010. He said this recession budget projects general fund revenues as declining by about 2% while expenditures will rise at 3%, leaving a deficit of about $900,000. What drives the budget out of balance are some one time occurrences, most notably a raid from the State that staff believes has a 99% probability of occurring. The State is facing a $25-$35 billion deficit on a $90 billion budget, the State's problems are large and of historic proportions. He said that the State has the opportunity to "borrow" up to $2 billion from California cities. The law states that they must pay it back within 3 years with interest, however, Mr. Falk is skeptical that it will be repaid, therefore, rather than treat this as a receivable, staff recommends showing it as reduction in revenue, at approximately $540,000 or 5% of the total budget.

The second factor driving the overall increase is costs for police services which will rise dramatically beginning in the next fiscal year. The retirement portion of the County police services contract will increase by 15% per year, and overall the cost for services could rise 12% to 12.5% per year. He said about six weeks ago, staff presented a five-year forecast and it is fair to say when police services comprise of 43% of the current budget those expenses represent a major driver of overall cost increases. If they rise at that rate while revenues stay flat and, if nothing is done in 5 years, police services could comprise up to 70% of the budget. The Council recognizes the problem, has retained Matrix Consulting to deliver a police service alternatives report which is expected to arrive this summer. Orinda and Danville have done the same thing and face problems of a similar magnitude.

On the advice of the Finance Subcommittee, $250,000 has been reserved for conversion of police services from the Sheriff's Department to an alternative service provider. Adding the $540,000 from the State take-a-way, the $250,000 for police alternative services and the $100,000 the City is reserving for transition to a new regional radio system makes up a large part of the $900,000 shortfall.

Mr. Falk said the Lafayette City Council have been fiscal conservatives for the better part of two decades and as such, has put away about $8.5 million in reserves recognizing that the economy dips and rises. The Council has long had a Reserve Standard wherein it seeks to keep the equivalent of a ½ a year's annual general fund budget in the bank in case of emergencies. For the last several years, the Council has exceeded the 50% target and is now at about 79%. Therefore, if the recession has a one or two year impact, this is what the excess reserve is for. If the recession lasts much longer, the budget will need to go in a different direction.

The budget retains the service levels the City has provided for many years; it does not cut any service levels. The direction provided to department and division managers was to come in with the flattest budget possible and they delivered on this expectation. Falk particularly commended Mr. Lefler in Public Works who has asked his major contract providers to lower their rates and their costs, this effort will total about $85,000 in savings not reflected in this budget. And, staff has been diligent in their efforts to keep costs down.

He referred to total General Fund expenditures and transfers which are at almost $12 million, which is an increase of 2% over the current fiscal year. Revenues are about $11.1 million which is a decline of about 2%, leaving a budget gap of $900,000 and an approximate 67% Reserve level. The budget includes a $3.8 million capital improvement program. There has been interest on the part of the Roads Repair Committee to maintain or increase the General Fund contribution to the CIP, but this budget proposes remaining at the $1 million level, with the remainder of the CIP funded by other revenue sources.

The budget adds one new program; Fund 17, which is for parkland acquisition and open space. The Parks, Trails and Recreation Commission is wrapping up its 5 year CIP and members have ideas about how they would like to spend money over the next five years. Likewise, the Council has recently formed an Open Space Committee to develop a plan for acquiring open space and explore options for funding those purchases. And, last November, Measure WW passed which will deliver $1 million that the Council will need to allocate.

In terms of personnel, there are no upgrades or promotions. Staff is proposing to add a Library Building Superintendent and Caretaker to oversee maintenance, repair and upkeep of the new Library. The Council has entered into an agreement with the Lafayette and Library Learning Center Foundation wherein the County's contribution to the operations of the Library will remain constant when adjusted for inflation and that the Foundation will fund the increased costs which would include the costs for the new position. The budget does include salary range increases that occur as a result of the bi-annual salary survey which is a long-standing practice the City has engaged in to ensure employees are paid competitively. It also includes $135,000 in merit increases for employees that will result from the third and final year of an employment contract which the Council entered into with the Association of Lafayette Employees two years ago.

The budget includes a number of Enterprise Funds which are differentiated from the General Fund and are expected to operate independently, such as Recreation Programs. Recreation had built up a small surplus in Fund 31; however, due to lower class enrollment, they expect to spend down that surplus and will incur a negative fund balance of approximately $27,000.

The City will be replacing the roof at the Community Center which will cost $200,000, and the City has put away $10,000 a year for each of the last 10-15 years in anticipation of replacement costs. Staff programmed into the budget the purchase the old Library when the new Library is completed and conversion of the building into a City Office Building. This was a recommendation

made by the Finance Review Committee after it received the results of a study by Bay Area Economics, which demonstrated conclusively that it was financially feasible.

In 1995, the Council anticipated that it would at some point stop leasing a building and purchase a building. Therefore, in 1998, the City sold a property at Pleasant Hill Road at Olympic and the proceeds of the sale were put into a City offices fund and, along with other property sales and interest accrued, the City has saved about $2.4 million for this purpose.

Mr. Falk concluded his report and said the Council may be uncomfortable with the idea of an annual budget that has a deficit associated with it. Staff anticipates questions and there is a list of options to consider for reduction. He said Ms. Robinson can also project the five-year forecast on a large screen so that the Council can understand the import of any decisions over the long-term.

Councilmember Anduri questioned the process to be followed, stating that included in the budget are a number of important decisions, such as roads, additional impact fees, City offices, earthquake insurance, use of Measure WW funds, and other things that individually could be focused on for discussion.

Mayor Tatzin agreed and suggested the Council focus on some of the specific issue areas. He said another approach might be to consider where the City wants to be in terms of General Fund revenue-versus- expenditure levels.

Councilmember Federighi questioned if the City had any assurances given the deplorable increasing State debt that the $540,000 will not be a continued raid of City funds. Mr. Falk said the State only has the opportunity to do this once; there was a Constitutional Amendment passed a few years ago; Proposition 1A, which attempted to build a fence around City revenues so the State could not raid them. Somehow, it was added in at the end of the measure that under certain circumstances the Governor could declare a fiscal emergency and in so doing could borrow up to 8% of property taxes diverted to cities through the triple flip motor vehicle in-lieu fee program, but they had to pay it back within three years with interest. His read of the proposition is that this is a one-time occurrence. However, the crisis has reached such proportions at the State that it is difficult to predict what the outcome will be. He has heard that since last Tuesday there has been discussed the need for a Constitutional Convention and re-writing the basic financial rules under which the State runs. Therefore, he is reluctant to predict what the State will do over the next few years, but he understands that this is only a one-time raid and it is required to be paid back with interest at the end of the third year.

Mayor Tatzin said his recollection is that they are allowed to do this a certain number of times over a decade, and Mr. Falk agreed that it was once every decade.

Councilmember Anderson said he felt this was accurate and the key is paying the money back with interest, and no one expects them to do it. Therefore, the sense is that they will never get another opportunity to come back because they will not have paid off their debt. He said the counties are now not getting reimbursed from the State for the Special Election just held, which provides another side to the issue.

Mayor Tatzin said he did not underestimate the ability of the State to say one thing and do something else; they froze Library funds which were approved by voters. They may be able to freeze pass-through funding to solve their own problems, and his own view of the short-term situation is more negative and he felt everybody should plan on a less favorable State environment.

Councilmember Federighi agreed, stating that even assuming the State does not freeze another source next year, by staff's own projections, it looks as though by 2012, reserves will be lost due to the projected police costs. Hopefully, the City will have a less expensive police department, but the long range projections are not good.

Mayor Tatzin said recent articles state that things may look better in the second half of the year, but had the economy cut by "x%", cities would see 1/10th of that coming back. So, the City would still be down substantially from where it was a year ago. People are talking about a multiple year recovery.

Vice Mayor Andersson said he noticed that numerous cities have declared city fiscal emergencies and he questioned if there was some legal advantage to doing that or was it merely an expression of concern. Mr. Falk said he was unaware of whether there was any legal advantage or not.

Vice Mayor Andersson noted that the County was also in dire straits, but he has not heard of them trying to take city monies. However, they provide a variety of services and he questioned any insight into how much they take. Mr. Falk said a meeting was held with the Finance Subcommittee to discuss this; there is a trend locally where Contra Costa County appears to be actively been devolving responsibility to localities. He noted this in the budget, stating that in 1996 Lafayette paid nothing for animal control services because it was a County service. By 2006, the County had begun a system where they charge cities for some level of service provided in those communities. In 2006, Lafayette paid $54,000 for animal control. In this FY, they are asking for about $150,000 for animal control without ever coming to the Council and asking for permission.

At a recent meeting he attended with City Managers Mr. Falk said that the Animal Control Director and the County Administrator admitted they were doing this. Their pension program is unfunded. Within three years, they will need $100 million in new revenue to fund the current pension obligations and there is no revenue source identified to deliver this $100 million. Therefore, if no new revenue source appears, the County will need to lay off 25% of the entire County staff. He said the County is essentially pushing animal control expenses onto cities and if cities do not like it, cities do not have to pay it and can provide their own animal control. Booking fees and libraries are other examples. The County has always provided the building, maintenance and services, but this year the County has adopted a position that all cities will be expected to own and operate the library building, and the County will only provide a bare minimum level of service inside the building.

He noted the Board of Supervisors has reduced the District Attorney's budget by $2 million and he then sent a memo to all Police Chiefs indicating that he no longer had the funds to prosecute misdemeanors, including shoplifting, vandalism, trespassing and assault and battery. Mayor Tatzin attended a meeting at the County Board of Supervisors discussing how unsatisfactory that was. The response from the District Attorney in the newspaper was that he would be willing to deputize City Attorneys to prosecute these crimes. Therefore, he thinks the County is functionally bankrupt and he thinks the point is well made that those services will be devolved to cities.

Councilmember Anderson believed that if there is a perspective that we are in a recession and coming back, there is one budget. If we are more in a reset environment, then possibly a different budget is needed. He thinks the City has some resiliency, believes the County creates a real liability and he did not believe the budget takes into account the fact that the County probably is

not coming back any time soon. He said with police services, the City is taking a very progressive step, but he questioned other things where the City is dependent on the County. He questioned if things were being put into place to cope with the loss.

Mr. Falk said one area which is more or less in the County is senior transportation. CCTA used to be responsible for providing senior transportation and this is an area where the Lafayette City Council felt this was a critically important service. The City has assumed responsibility to some extent for providing senior transportation and he felt it was difficult to speculate on what other areas might be next. The County provides services to those people who are most in need of services, such as those homeless, indigent, veterans, and that the basic social safety net the county provides is dissolving. He did think there could be increased crime as a result. He would be reluctant to reduce police staffing levels and if anything, the City should be increasing them.

Mayor Tatzin asked for public comment on the general $900,000 imbalance.

Public Comments:

GUY ATWOOD said generally, he understands there are concerns as to whether or not the State can repay the loan, but the loan is really not an expense; it is supposed to be repaid as interest. To say it is a $540,000 expense is not right and it should not be looked at as part of the deficit. Also, he suggested the Council may want to go through some of the other recommendations of the Finance Subcommittee. He said he did not truly have enough time to review the budget, as he received it on Friday and it was a holiday weekend. He said 8 months ago, his 3 year old business laid off 20% of their staff, cut all salaries, froze salaries, and they have survived. He felt that the Council has done a great job in being conservative, but over a period of time revenues must be matched with expenses and the same thing goes for the County and the State. What usually happens is a recession is to get back to reality.

Mayor Tatzin suggested that Councilmembers start with whether or not the budget was a recession or reset budget. Mr. Falk said he and Ms. Robinson discussed this a lot and they are attempting to try and adopt a mature glide path; his recommendation is not doing anything hasty because if it is a recession budget, they have a really great team that delivers high quality service and it would be ashamed to affect this.

Mayor Tatzin noted that the City Manager and Administrative Services Director sent the Council a list of possible reductions in the budget which the Council could also review, but he asked for Councilmember comments on a recession versus a reset budget.

Councilmember Anduri suggested looking at it as a recessionary budget for this next year. He agrees with Mr. Falk about the staff in place, and it is not the time to take action to lay off employees. He felt the budget projects that the City will end up with $7.4 million in reserve which is 67% of the General Fund and our Reserve is 50%. But, in addition to the actual cash, the City has a large receivable of $5.2 million which is real money that it will see someday. At some point the City was counting that as part of its Reserve, but then made the decision it would not because it is not actual cash. He wants everybody to be aware of this money, which he felt might influence things discussed individually.

Vice Mayor Andersson said he thinks the answer on recessionary or reset budget is not known. What is laid out in the 5 year projection is that staff has been conservative in budgeting, which treats it as a reset. When looking at the projected revenue increases over the next 5 years, they are mostly 0%, 1% or 2%. So there is no assumption things will come back in a robust economy

very soon. He thinks this is wise, and thinks the Council should not look at this as a worst case but a conservative case. Therefore, he sees it as a reset budget and he thinks he is comfortable with a deficit for this year simply because it is a one-time situation. If it turns out to be longer term or deeper economic cutback, then there is still time to deal with that.

Councilmember Federighi said given the five year projections, which puts the City at having no reserve at all by 2012, given the economists' general conclusion that the economy will not recover for some time as a nation and given the deplorable state of State finances and equally deplorable state of the County's finances, she feels the City needs to be prudent now. She said they have a healthy reserve for bad times but she thinks it will not be a one-time situation and the City should look now for areas to save. She believes the City staff is great, she is not proposing eliminating staff, but in today's economy, she was not sure how to justify increases in salaries and benefits that total 7% when revenues are going to be possibly only 3% higher. She felt the Council should think about renegotiating the contract because the formula in place generates those increases automatically.

Councilmember Anderson said this issue is tough; he respects staff and wants to honor the agreement made two years ago because they have been consistently there for the job they do. However, this is the year the City will find out a lot about police service options and future options, and he believes it is a "test" year and is okay for having some loss of Reserve status to go through it, but he felt the City should be careful where it puts that extra money from the Reserve because it will need it in the next 2-3 years to make a transition in police services, deal with new county costs, or other things. He would want to honor the contract and feels it is important to stay consistent with it which gives employees some confidence.

Mayor Tatzin said regarding recession versus reset, he hopes it is a recession and thinks the Council should plan for a reset because he thinks there are too many things not accounted for in the 5 year forecast that could occur. It has been his experience that when things go bad, it is because everything went bad at once, or more things than anticipated simultaneously. The forecast builds in some things going bad, but not the State holding the money or the County walking away from prosecuting misdemeanors or other things that may happen. Also, historically, they have viewed the 50% Reserve not as a Reserve for recession or bad economic times, but a physical catastrophic event where the City needed to spend money fast to save people's lives and property. This is what he thinks should be done with the Reserve, and if looking at it from that perspective, the City is using up a substantial portion with the $900,000 deficit of the amount of money the City has above that in this proposed budget.

His sense is that if the $900,000 is not reduced by some amount this year, if the reset option is what is facing the City, then it makes the cuts even more difficult in a subsequent year because of less money. He suggested not having deficit spending but reducing it down to the level of $400,000 to $600,000 as opposed to $900,000, which would mean finding $300,000 to $500,000 out of the General Fund budget. He thanked Ron Lefler for finding $85,000, but there are also a series of other things that can be done that collectively can get to that number.

Councilmember Anduri said he was keeping an open mind on this, but he was not sure he agrees. Looking ahead, he agrees with the unknowns about the State and the County, but when looking at the City's five year projection, 75% of the cost increase is police. If the City is able to bring that under control to the extent that the City controls its own budget, it is in relatively good shape. He sees this year as a test year and sees trying to find savings where necessary, he would not push $400,000 or $500,000 of savings. He sees the surplus a little differently and believes it should be set at 50% of the General Fund expenditures because that is the amount the

Council feels it should have in order to meet a physical emergency, and the City has been fortunate in managing so that it has more than that. But if there is a need to spend part of that, he thinks it should be spent.

Councilmember Anderson suggested talking about specific items which would go toward questions like spending $100,000 to fully fund the Regional Communications System. Given the state of all other cities and participants in that system, he questioned if Lafayette would be the only one to fund it, and then it never happens because no one has the money. If this is possibly the case, he would want to set the $100,000 aside or use it for something else. He believes in this environment, people will be walking away from these issues.

Councilmember Federighi said the $100,000 is not an expenditure at this point but is in the sinking fund. So, the City would be in a position to spend the $300,000. Mr. Falk agreed and said Alameda and Contra Costa Counties have received a Homeland Security Grant and the goal is to create a communication system that will allow any public safety officer or public works worker to communicate with anybody in any jurisdiction between the two counties. It is an immensely complex program. The Council agreed to be a participating agency a couple of years ago, signed the resolutions which would make Lafayette a participant and received an estimate from the Executive Director that cities' required contribution to purchase all new radios would be $300,000 and they expect it to be up and running in late 2010. For each of the last two fiscal years, the Council has reserved $100,000 and proposed in this budget is the last installment to the sinking fund, which he said does count as a General Fund expenditure. Ms. Robinson said when staff calculates the Reserve, those funds are restricted and not counted as cash in the reserves. So, it is not technically an expense, but a restriction.

Mayor Tatzin said if this does not move along quite as quickly as anticipated, he felt the City could reserve $50,000 this year and $50,000 next year and still achieve the $300,000 at the time it is approved. Mr. Falk said alternatively, the Council could reserve none of it this year, but staff was trying to be conservative in its assumptions and follow previous Council direction.

Mayor Tatzin said he appreciates staff's recommendation to transfer $100,000 of surplus revenue in the Parking Program to Downtown Maintenance and use up the Reserve in the Core Area Maintenance budget. To some extent, by showing no general fund expense this year, it masks an expense which will occur next year. In order to maintain the same level of maintenance, the City would then have to provide an amount to the general fund equal to what the Core Area Reserve is providing this year, which he confirmed was around $200,000. He felt this was a substantial potential increase in next year's budget to maintain the same service level.

Ms. Robinson clarified there will be at the end of this year $380,000 in reserve on expenses of about $430,000. So, if the City continues to take another $100,000 next year, it can probably get through one more year with no general fund contribution. Mayor Tatzin said if the Council does not think the general fund can provide all of it, the City could start slowly reducing the total amount of maintenance expenditures incurred so the reserve can last longer. This may be what happens because Mr. Lefler has created substantial savings. He said that given there is a divergence of opinion on the general outcome, he suggested talking about some specifics and where the Council comes to as a result of that.

Mayor Tatzin suggested review of the list that staff provided about potential savings. Mr. Falk reported that staff anticipated the Council may not be entirely comfortable with the $900,000 deficit. Staff met with the Finance Subcommittee of the Council and at that time, the Subcommittee suggested staff put together a menu of options for consideration by the entire

Council to reduce costs further. He said generally, the list comprehensively includes all of the ideas that were promoted by the Lafayette Finance Review Committee and a few more generated at the meeting with the Council Finance Subcommittee.

1. The Council agreed to adjust the final budget to reflect the $85,000 in Public Works contract reductions.

2. Accumulated Prior Year Savings in the various departmental budgets. Mayor Tatzin said these have served the City well because it has allowed managers to accrue money over a period of years and then use it for something that would not necessarily fit into one budget year. He said once they swept some of it back and Ms. Robinson confirmed that in 2002/2003 when cuts were made, about half was swept out. She said this is money the City would not normally spend but acts as a cushion for managers so they don't feel they must spend their entire budget.

Councilmember Federighi likes the idea of a cushion, but she questioned if the City would hurt itself too badly if half was swept. Mr. Falk said this was a fiscal reform introduced by the Lafayette Finance Committee in 1992. At the time, department managers had a use it or lose it budget. On June 29th, a manager could go out and purchase materials because it would be lost if not spent. Mr. Atwood, who was on the committee, recommended a 999 account which allows managers to keep the savings year to year. He said all could be swept away and it would have no impact on service levels, but if this became a habit, it would erode the purpose of the plan.

Councilmember Anderson said he feels the City should pull the funds back in; the point is that we are trying to be more conservative and if staff is over budgeting, doing legitimate purchases, and have left over funds, they should come back to serve general purposes. He feels staff is mature and not prone to make last minute purchases, and he suggested using the funds for something else.

Mayor Tatzin questioned and confirmed that taking half the amount was supported by the Council.

3. Mayor Tatzin said the third option is postponing funding allocations to various sinking funds. For example, $250,000 is being set-aside for police transition without knowing the City will transition to something else; however, the argument made provides for a cushion which may be needed to pay for higher county costs in the future. Another allocation is the $100,000 discussed for the communications system. He questioned how much the vehicle fund was reduced last year. Ms. Robinson said it was stopped at a certain year and it was not started up again and was not in this budget.

Mayor Tatzin suggested taking $50,000 from the Regional Communications Fund, and Councilmember Anderson suggested $100,000 because he did not believe cities would be putting in $100,000 into the system and their price is actually larger than Lafayette's. Vice Mayor Andersson felt that unless there is any serious expectation that it will move forward in the immediate future, he would suggest $100,000. Councilmember Anduri believed it should be left where it is, as the radio system is too important. Mayor Tatzin suggested holding back $50,000 now, indicate the City is expected to have it fully funded by the time the system is planned to be implemented. Councilmember Anderson believed the City has the reserves to pull the money out should it need to do so. If it is not dedicated at this time, it counts in the general fund and helps reduce the overall budget deficit. He said he was unsure it would happen because it is a

complicated project and based on a lot of cities putting a lot of money into it who do not have the money.

Mayor Tatzin noted there was a presentation at the Mayors' Conference and they did get one of the Senators to put it in a Stimulus Bill, so it may be moving forward on a federal level. He said all the network does is create it, but each jurisdiction must purchase its own radios, which is what the City's money goes for. Councilmember Anduri confirmed there was $200,000 in the sinking fund now, and he supported then taking out $100,000. Councilmember Federighi said she would agree to the entire amount, but preferred $50,000. Mayor Tatzin confirmed that $100,000 would be deferred for the Regional Communications system.

Mayor Tatzin said there are two items the Council needs to consider in combination with an item on a later page regarding staff compensation. The next two items deal with furloughs. Last year, he said City offices were closed for 4 working days between Christmas and New Year's and allowed employees to take vacation time which meant that the City incurred the same cash outlay during that period; however, the liability on the balance sheet was reduced. One option is to say that each day the Council requires a furlough day, that policy over time, it would reduce vacation liabilities by $10,000. If closed for the 4 days this would be $40,000. He said a related item is renegotiating the employee contract which was raised by Councilmember Federighi. The furlough issue is different, but he suggested discussion occur simultaneously regarding the employee contract.

Councilmember Anderson said he did not support re-negotiating the contract. He thinks the furloughs make sense especially during the holiday period because it is not a problem, and he was not sure if a general work furlough needs to be looked at for employees because it is a possible loss of service, the days of the holiday do not impact service, but other work furlough days would be a tough decision. He wanted to go through the list, get further along and see what other savings could be made instead of addressing the contract.

Mayor Tatzin said he supported furloughs during the holidays. He also thought about asking the City Manager to work with staff to schedule more furlough days over the course of the year, perhaps with the understanding that the additional days could occur early in 2010 if warranted, based upon what actually happens in sales tax receipts and assessed valuations. If not warranted, then they could be eliminated in a mid-year budget review.

Councilmember Anduri questioned if a furlough is a mandatory decrease in annual salary. Mr. Falk said a furlough is a day off where employees are not paid; some cities will allow the use of vacation and some cities will not. Mayor Tatzin proposed doing it the same as last year where people could use their vacation time, and Councilmembers Anderson and Federighi agreed and to do it between Christmas and New Year's. Councilmember Anduri said he strongly disagreed with the mandatory furlough over the holiday period; however, the majority of the Council agreed with a mandatory furlough with City offices being closed for 4 days between Christmas and New Year's which will save about $40,000 in vacation reserves.

4. Mayor Tatzin said the next item is a decrease in the annual contribution to the CIP from the general fund by $600,000, and another recommendation is that the increase in garbage tax franchise fees of about $400,000 will also go into the CIP, so the City will continue to invest $1 million. However, there was discussion when the Council approved the garbage franchise fee that the intent for the $400,000 to be over and above the $1 million historically put in from the general fund. Staff recommends $600,000, which is not $1 million, which could be changed.

Councilmember Anderson questioned capacity and asked if the City Engineer could comment on whether the City could do $4.8 million in projects in the next cycle. Mr. Coe said in his written staff report in the CIP to the Council, he mentioned $3.8 million already represents a substantial increase in the number of projects from the original version CPAC had reviewed along with members of the road task force. This essentially pegs the City at the capacity of the 3 staff engineers currently in place. His recommendation in the staff report was that if additional money is added to the program, the Council should consider looking at 2011 which is a lean year and which needs to be augmented in order to have a substantial program and continue efforts the City has been making.

Councilmember Anderson said if the City is straining at doing the $3.8 million would the City benefit from cutting that down a bit and saving some of the general fund money that will go into capital projects and use it to help offset overspending. Mr. Coe said if the goal is to fully utilize City staff, a slate of projects should be done and not take $100,000 or $200,000 away from the total. At the $3.8 million level, they are not strained but will be operating at 100% capacity. So, he would not recommend decreasing any contribution nor would he recommend making any new significant increase to that level.

Councilmember Anduri said on page 5 of Mr. Coe's report, it states "CPAC urges the City Council to maintain the historical contribution level from the general fund and to consider the Waste Management mitigation fee as an addition to that funding." He assumed and confirmed with Mr. Coe that this recommendation was made before the additional projects were added to the list. Councilmember Federighi said it was her understanding and Councilmember Anderson's feeling that when the garbage fees were raised because of the impact of the trucks on the roads, that this was extra money—not that it would replace money already committed to. She questioned if Mr. Coe was okay with the current suggestion that the contribution from the general fund be just $1 million as opposed to $1.4 million. Mr. Coe said he was okay for this year; staff pointed out other one-time events that are generating non-recurring revenue to the capital program, like stimulus funds which freed up $720,000 in the fund balance. They had extra Proposition 1B money as well, and those two events will not occur again next year. CPAC's recommendation about the $1 million plus $400,000 is more of a long-term view to sustain the CIP going into the future.

Councilmember Anduri said he thinks they would want to move forward with an understanding that the $400,000 in waste management impact fees be used for roads this coming fiscal year, along with another $400,000 in general fund for the next year if it is possible to do this. He said the report now is very different from the one seen two months ago in terms of amounts available and the roads being fixed. He said it is a much higher level of building activity . The year after that; however, is down and then the year after that it comes back up again, and he felt funds should be targeted for that low year.

Mayor Tatzin said if this is done, to be honest with the public, it should be put into the reserve now because otherwise $800,000 must be found for next year. Councilmember Anduri favored this. Councilmember Anderson felt it seems that the program should be leveled out and this is why he questioned capacity. He would hate to see $3.8 million dedicated to capital projects without the capacity and next year looking at residuals from this year that could have been used for something else. Therefore, leveling it at the right level that matches staff capacity is valuable.

Councilmember Anduri believes the City is at the right level in terms of using engineers the City has through next year. And, just as the City did not expect some of the money this year, no one

knows what will happen next year. He did not see lowering it this year and would favor putting in $400,000 in reserve for next year.

Vice Mayor Andersson agreed and noted that this is definitely one area in which money not spent now is more money having to be spent later. To the extent the City can continue to be at engineering capacity for as long as possible serves the City well in the long run. Councilmember Anduri said this is where he thinks that the $5.2 million out there as a receivable comes in because the City is going to receive it at some point. He thinks the City can reserve general fund money now, spend it out of the reserve, with the knowledge it will get it back. Another point is that the City Engineer has implemented the Council's direction about how much money will be spent on local roads at the expense of maintenance of arterials and collectors, but this has its own cost down the road as well. Councilmember Federighi agreed and said CPAC is strongly urging the Council not to neglect maintenance in the following year, and she agrees with this.

Mayor Tatzin confirmed that the Council will leave the contribution as proposed in the City Manager's budget for this year which, between the garbage franchise fees and the general fund, will put $1 million into the CIP budget. The Council will return later in the evening and discuss whether or not to reserve $400,000 from this year's general fund for future capital improvements.

Public Comment:

GUY ATWOOD said he hoped the Council understood everything in his letter from March 30th about roads and moving toward solving the problem. He said the problem with the $400,000 is that if $3.8 million is spent this year in the upcoming two years, and then the next year it goes to $1.7 million, he questioned where the funding would come to make up the difference, noting that the $5.2 million will run out. He felt it was important to put away the $400,000 today in Reserves to be able to use when you do not have $3.8 million available to spend on roads. He also noted that he was also suggesting in his letter that, other than what the Council has already committed to, realizing it cannot commit to more than one year in advance, is to use the $400,000 every year to do roads in addition to the $1 million and the money that comes from other funds, and use the savings from contracts which is $380,000 this year, and also use the interest on the loans to the RDA for roads.

GABRIEL FROYMOVICH echoed Mr. Atwood's comments, and in addition to the practicality of the $400,000 dedicated to roads, he thinks this year it should be put away in a special reserve. If the Waste Management fee is not specifically dedicated to roads every year, then in a way, it is a bit of a stealth tax. The City decided to raise fees to fund something that needs to be funded and he felt it would make many people nervous if the Council did not put it into a reserve if not spent this year.

ANN BURNS voiced nervousness about seeing the roads fund cut back at all, said they were looking forward to the additional monies which she hoped would go for failed roads, and she said that even though her road is being fixed, she still voiced concern and fairness for those on still lived on failed roads. She believed Mr. Atwood's letter was very well-written and asked that the Roads Task Force review and discuss it. She said now that bids are coming in so low now is the time to get things done, and she thinks all of those things should generally be reviewed.

Mayor Tatzin said the City has actually spent $66,000 more and he questioned what other areas she would suggest be cut. Ms. Burns said she was surprised seeing money for the Library and maintenance which many understood would not come from the General Fund. Mayor Tatzin clarified that the City will add a staff person who would largely be funded by private contributions

from the Library Foundation. The money from the General Fund will remain the same, except for inflation costs, and this budget is consistent with the expectations. Ms. Burns said another area which could be cut is raises and said if she were working she would not expect a raise right now. She felt it was frustrating to see money going into sinking funds that sits there when people are living on such failed roads.

Mayor Tatzin questioned if there was support to approve the sinking fund levels.

Motion: It was M/S (Anduri/Andersson) to set aside $400,000 in general fund for next year's capital improvement budget.

Discussion: Councilmember Anderson voiced concern, stating the City has what it needs to do this year. Next year, the City will have a new perspective on many things and have an opportunity to review this. He felt the $400,000 could be used this year for other things since we are in what is already a deficit spending pattern. Mayor Tatzin agreed roads were very important, felt it will continue to remain a high priority; however, he also believed the City was in uncertain times between recession and reset and felt it was premature to make that commitment. Councilmember Federighi suggested waiting to determine where else could be cut before making that commitment.

Councilmember Anduri deferred his motion.

Mayor Tatzin noted thus far, the Sinking Fund has been reduced by $300,000. He asked Chief Hubbard to comment on the next item, which is to eliminate one patrol officer dedicated to vacation relief and eliminate one of two patrol officers dedicated to traffic enforcement.

Councilmember Federighi said it is her understanding that the current K-9 officer does not work full-time in Lafayette. Chief Hubbard said he is assigned full-time in Lafayette and works full-time, but because there are so few K-9's in the County, gets called out of the City for mutual aid often. Councilmember Federighi questioned if it made sense to combine the vacation relief officer with the K-9 officer, which could be a savings of $185,000. Chief Hubbard said the Council would have to eliminate a body because a K-9 officer cannot serve half-time.

Mayor Tatzin said in prior years, various Chiefs have suggested that the City saves money or gets better service by having somebody in-house who provides vacation relief rather than using overtime or other methods. Chief Hubbard said the situation is almost a wash; because of the 14 officers with training and amount of seniority, many officers receive 4 weeks a year, most get at least 3 weeks, and therefore, an officer, from one month to six weeks out of the year will not perform relief work. Those relief positions would require overtime to replace any person on vacation. When looking at it financially, an overtime deputy is actually less expensive than a full-time officer because overtime does not take into account retirement or other benefits—just overtime salary. Therefore, it will be somewhat of a wash. If there was going to be a decrease in staffing, the vacation relief person would then be replaced by the K-9 officer. To completely eliminate it and leave the K-9 officer in the position he is in now would not net any valuable savings because that K-9 officer still must be a Lafayette officer during the week and cannot be dedicated outside the City for 20 hours.

Mayor Tatzin said if the suggestion was implemented, what would citizens experience or not experience. Chief Hubbard said if the vacation relief officer position was eliminated, it would put the K-9 officer as vacation relief, which means half time he would be assigned to day shift and portions of other times, he would be assigned to night shift. Because of the fact that there are

traffic officers who work daytime and into early evening hours, youth service officers and detective in the daytime, there is upwards of 6 officers in cases of emergencies. At night time, those service levels go down and that K-9 position typically has worked in the evening to supplement the two officers who are assigned to graveyard until 2:00AM, and there is a sergeant up until after midnight, leaving a total of 4 officers in the evening. If the K-9 officer is not in the schedule, from 6PM to 6AM, there would be two officers on duty and a sergeant supervising those officers until midnight. Then, from midnight to 6AM, there would be two officers in the City.

Councilmember Anderson said if Chief Hubbard were to choose, which would be the better choice. Chief Hubbard said to eliminate the traffic position has two negative effects—loss of revenue and loss of more traffic enforcement which results in less safe community. Therefore, about 100 people per month will get a firm understanding of what it means to drive safer. He would choose option 1 to eliminate the vacation relief officer, which would put the K-9 officer in that position to do vacation relief and they would still have the K-9 working in the evenings about 50% of the time. It would probably require some philosophy and ability to assist neighboring agencies. Therefore, their K-9 would not be available to go to Walnut Creek to perform an outside assist. Also, one of the traffic officers would be shifted to a later time period to cover evening commutes up to about 8PM. They ran that schedule last year which resulted in traffic officers making more DUI arrests than some of the graveyard units because they were hitting later evening traffic. So, this would be his preference.

Mayor Tatzin questioned what sort of impact would occur in doing fewer out of town requests for K-9 assists. Chief Hubbard said the impact for Lafayette is not there and we are lucky to have a K-9 officer, but most of the time the dog is utilized is not within the City limits. Mayor Tatzin questioned what percentage of time is the K-9 officer is spent out of agency, and Chief Hubbard said it is probably less than 5% of his time is spent outside the boundaries of the City of Lafayette; however, about 60% of the time, the dog is out of the car performing functions of searching for missing persons, chasing down criminals, or providing narcotics detection assistance, which is outside Lafayette. Mayor Tatzin questioned what police staffing levels look like per capita compared with surrounding communities. Chief Hubbard said Lafayette was the same per capita with Orinda and Moraga at .06 per capita, which is the bottom in the entire County.

Councilmember Anduri questioned what the officer is doing the other 95% of the time, and Chief Hubbard said he is on patrol in the City of Lafayette; however, the dog is "deployed" outside the city limits 60% to 70% of the time because Lafayette does not require as much K-9 use.

Councilmember Federighi said then how important is it for the city to have a K-9 officer if 95% of the time is doing regular patrol work and only 5% with canine. Chief Hubbard said the dog has been bought and paid for by donations. The first two years of K-9 expense was paid for by citizen groups, and at this point, they are only paying for dog food and some training and the dog has a good two years of service life.

Mayor Tatzin said the Council has taken a position saying it needs more police, response times at times can be compromised, and he did not feel it made sense to reduce officers and he would not favor either potential. Councilmember Anduri agreed.

Councilmember Anderson said he has heard about some federal stimulus money to provide cities the ability to not lay off police officers, such as the COPS program being picked up for the first two years with the guarantee that cities pay another year. He asked the Chief to review this to determine whether or not this is an option to maintain service, but get someone else to pay for it.

Chief Hubbard said this is a new grant which is part of a COPS program. It requires that a new hire who is put through an academy and hired by a police agency. Because the City is a contract agency, the money would have to be siphoned through the County to add a position. It must be to enhance the current staffing. Councilmember Anderson said he believed it was to "maintain" officers. Chief Hubbard said he was not familiar with this and discussed various grants reviewed. Councilmember Anderson noted this grant dealt with not laying off police officers. Mr. Falk said he did not hear about this either and would follow-up with getting grant monies if the grant existed.

Mayor Tatzin confirmed there was no public comment.

Mayor Tatzin said the third proposal is to eliminate the crossing guard program, and Councilmember Anderson supported retaining this. Mr. Falk confirmed that the position is split with the PTA's.

Next is to eliminate Senior Services programs at Lafayette Community Center. Mayor Tatzin said he did not want to eliminate the program, but the Council has discussed with the Commission regarding identifying activities to raise revenue. He suggested including $10,000 to $20,000 in revenue as a prompt because this has been requested for a number of years.

Jennifer Russell noted the program was starting a membership fee and she did not have any projections. Mayor Tatzin felt seniors comprised of a substantial portion of the population which will increase, and there are many needed programs and in order for those programs to be adopted, the City will need to understand both the potential for the programs to provide services and revenues that can come with them. The Council has gently suggested previously that the Commission look at revenue alternatives, and this action would be more direct.

Councilmember Federighi felt $10,000 was a lot, but Mayor Tatzin felt it would send the message. Councilmember Anduri did not believe this was the message the Council should send; they are looking for the fee to increase services because currently there is a good level of services but room for more. Therefore, he was not in favor to reduce the amount the City is spending.

Mayor Tatzin said the City should commit to spending the $80,000, but he does want to use it as a more forceful level of communication. Councilmember Anduri disagreed because they are trying to raise money to provide more services. Councilmember Federighi said she believed they were also trying to be more self-sufficient, and Mayor Tatzin said this has been encouraged. Councilmember Federighi felt $10,000 could be too high. Councilmember Anderson questioned whether or not the idea was to reduce the City's contribution to $70,000 and make $10,000 their obligation?

Mayor Tatzin said in comparison, what does the Youth Commission raise? Ms. Russell said this year they have raised $14,000. Mayor Tatzin confirmed the costs charged for events, and he believed more creativity was needed in their fundraising and suggested a new source of revenue be raised in the amount of $5,000 by the Senior Services Commission, continue to show the $80,000 in expenditures, with the explicit understanding that if they not raise it, the City will backfill for this year, similar to recreation programs. However, he felt a more serious conversation needs to take place. Councilmember Anderson supported $5,000; however, it seems that if it is on top of the $80,000 already funded, it is soft and suggested $75,000 in general fund revenue be shown. Councilmember Federighi confirmed the $5,000 was being added to revenue.

Mayor Tatzin discussed funds raised by self supporting programs and fundraising by the Youth Commission, and felt they should re-think their mission. Vice Mayor Andersson said there is a theory that if you give away something for free, they might take it for granted but if a low fee for it is charged, they believe they are getting a great deal. Councilmembers challenged Senior Services to start becoming more self-sufficient by budgeting $5,000 for revenue to offset expenses in that program.

Public Comment:

GUY ATWOOD said there is a lot of money available for seniors through a program called service coordinator programs from the federal government, particularly for independent living seniors because they want to keep people out of assisted living and nursing homes. If seniors are not currently taking advantage of the program, they should look into it.

Councilmember Anderson questioned who is taking on grant responsibilities for senior services, and Mayor Tatzin felt that those liaisons to the Senior Services Commission could pass on that information.

Regarding eliminating the Senior Transportation Program, Councilmember Federighi believed the City's $25,000 is modest and she would not want to see this cut in view of other transportation cuts. Mayor Tatzin supported the $25,000 and questioned what message the Council would like conveyed to the Mayors of Moraga and Orinda when he meets with them on Friday since their historical contributions have been small in comparison to Lafayette. Councilmember Anduri felt they need to step up and pay their fair share. Councilmember Federighi agreed and said she did not believe their share was 14.5% but they should at least be paying 8.5% because the ridership is about 20% for each city and Lafayette's is 60%. Mayor Tatzin questioned what the City's position would be if they indicate that they cannot contribute.

Mr. Falk referred to page 114 in the budget, said Mary Bruns is present and it is his experience is that Ms. Bruns is very diligent and hard-working, but she needs money from the other communities. She has prepared a grant that hopes to deliver a lot of money, and the budget is predicated on the assumption that Moraga and Orinda will both deliver $14,500 for a total of $28,000. And none of the remaining three revenue sources are confirmed at this point. He felt this needs to be an on-going dialogue that the Council has with Mary Bruns and the senior transportation supporters through the year as grants do or do not arrive.

Mayor Tatzin said there are other sources of revenue the City is hopeful for and uncertain, and he suggested focusing on the near term issue of the other jurisdictions as they are preparing their budget and what message the City wanted to send them.

Mary Bruns said Orinda gave them a $3,000 grant. They indicated they may put Lafayette in their budget this year for the first time, she felt it was reasonable to ask them for $14,500 and she hoped that the message would be that the Council is requesting this money and she would be happy if it were in their budget with an on-going commitment to join in Lafayette in supporting the program.

Mayor Tatzin questioned if the senior services' base program cost is $103,000 and projected revenues are $86,000. Ms. Bruns said on page 9, she indicated $111,000 of revenue, which is the $86,000, plus the City's $25,000. Mayor Tatzin said for if both Moraga and Orinda both overlook the request this coming fiscal year, he questioned what would be the impact on the program would be. Ms. Bruns said they keep looking for money in many places. She did not

believe the program would be closed down but they would simply continue to look for funding. The fact that each city has contributed something is positive because it was not expected in the beginning.

Councilmember Anduri referred to page 115 and the one van option, said there is an item under equipment of $10,600, and he questioned if this was the City's share of a second van. Ms. Bruns said yes, their van has about 170,000 miles, the lift is shifty, and when she submitted her grant application, they acknowledged a new van was needed, but County Connection is not yet able to supply any. For a relatively small amount of money, they could get a second van. This does not mean they are running a two-van program, but a one van program with a backup. She said Eden Housing approached her some time ago about perhaps some type of shared transportation, and she thinks ultimately, they may support some funding into the program if they can figure out a way to make it all work.

Councilmember Anduri said this item was added to the Consent Calendar a few meetings ago, where the Council agreed it would approve the application and at this meeting or at a follow-up meeting, decide whether or not to pursue the application.

Mayor Tatzin said he did not hear interest in changing Lafayette's contribution, but merely talk to neighboring jurisdictions to be equally generous. Councilmember Anduri confirmed that if the budget is approved, the City is approving proceeding with the grant.

Regarding eliminating paid staff for Youth Services, Mayor Tatzin said they almost pay for their staff in a sense.

Regarding Recreation Services, Mayor Tatzin said to some extent, this is germane this year for the general fund budget because the projection is for a deficit instead of having to receive general fund support. There are three options and he asked for comment.

Ms. Russell said when she forwarded her projections to Ms. Robinson, she had not finished up the year and she was somewhat conservative, and was looking good at not going into a deficit situation. There were three years in a row that she collected a deficit and an administration fee was added which took care of it, but she always inherits the debt and the general fund must cover it until it is paid back. She looked at their summer fees and there was quite a drop due to the economy. Revenue is exactly the same as last year which was a banner year which is encouraging.

As far as administrative costs, she was not sure where the $35,000 came from and she hoped the Council does not charge recreation programs rent for the Community Center. The Council made the decision to own a community center and she tries to operate it efficiently and it has become quite successful on many levels. A lot of grants have gone into this facility with the understanding it is to be used by the public. She continues to make energy efficiencies, her hope is not to see the cost of running the center increase, and personally felt it was a bargain and a responsibility to have such a facility in the community. And, she believed that to charge users to cover direct costs of teachers, supplies and a portion of utilities is fair.

Councilmember Federighi asked to add $27,000 to revenues under Parks and Recreation, and Ms. Russell believed it could be added and said she was pretty confident they would not have that deficit this year, which would help.

Councilmember Anduri said the City discussed in the past increasing the fees charged for use of the fields and he questioned and confirmed with Ms. Russell that this could be reviewed again.

Mayor Tatzin questioned what Ms. Russell felt a $2 facility fee per sign up. Ms. Russell said an administrative fee is already charged and they are looking at ways to impose an increase which is part of the class fee but not necessarily a labeled fee and when paying the instructors, it could be subtracted off of that. However, he confirmed this was not included, and Ms. Russell said they could add this to revenues. Ms. Russell felt that at the mid-year budget adjustment, staff would have gone through the summer and fall programs and will have a good sense of where things are and they can make a higher contribution back to running the facility.

Public Comments:

CAROL SINGER commended the Council on their budget work, said when doing calculations for parks and recreation, the City should calculate the rent that would be charged for the City Council and Commissioners to use the facility and include utilities, as well.

Mayor Tatzin said the Council and Commissions will all be moving out in December and start meeting at the new Library Community Room. The Parks and Recreation Department will have full use of them and generate more revenue, which can be shown at the mid-year budget review.

An audience member questioned whether the Council paid for the Library use, and Mayor Tatzin said one way or another, the City pays. He said the Council has not yet adopted rental fees for library use. One advantage of having the City Council pay is that it would be easy for the Council to say no when people approach them to use it for free.

Regarding Downtown Vitality / Special Events, Mayor Tatzin questioned what the current budget shows in terms of the City's support for Art and Wine Festival, the Reservoir Run, etc. and what revenue is anticipated from the Chamber of Commerce because of the policy change. Ms. Robinson said about $35,000 is spent in Public Works and Police for the Art and Wine Festival, the Reservoir Run is about $6,500, there is a total to not go above the amount traditionally spent and that if higher costs were incurred, the Chamber of Commerce would reimburse the City the difference. Mayor Tatzin confirmed this was reflected in the budget, and there were no increases anticipated.

Councilmember Anderson said he appreciates the annual Arts grant of $5,000, but given the fact that funds are needed in Senior Services, he thinks it should be eliminated. He felt people will understand that it is a lean year and it cannot be afforded. Councilmember Federighi agreed.

Councilmember Anduri questioned if the City knew the amount given encourages an organization to stay within the City. Mr. Falk said one year a $5,000 grant was used to provide half the cost for a grand piano that is now at Town Hall Theater. This allowed Generations in Jazz hold the Lafayette Jazz Festival in town. Another year, the arts grant went toward funding a portion of the new $55,000 grand piano that went in a middle school classroom, and the rest was derived from a community fundraising effort. One year, the money was used to purchase jazz music scores for the Stanley Jazz Messenger Middle School Band who needed a new set of music. One year, the City purchased a trailer for the Generations in Jazz Foundation that allows them to haul amplification and mixing board equipment around town to all special events, which has had an effect on how many events they were able to hold in town. Most recently, Mr. Falk said it did not look as though a recipient would be identified until the Town Hall flooded and an arts grant went toward putting new sheet rock up and kept the theater thriving.

Vice Mayor Andersson said it sounds like from the description given, the money is well leveraged to increases the activity level in the town and he supported leaving it in. Councilmember Anduri felt it had more symbolic effect than anything and it serves as a means of leveraging other monies, and supported it as well. Councilmember Anderson felt the grant did not have to be given every year as an option. Mayor Tatzin suggested leaving it in but raising the bar as to how necessary the money is and leverage it well. He felt if it were 10%-20% of a total amount needed for something significant, it would be leveraged well.

Regarding Commissions, Councilmember Federighi questioned if the Library Arts Committee still needed. Mr. Falk said they are absolutely needed now because there is $75,000 remaining unspent in the Arts budget for Small Works Program and the committee will be meeting. They had decided to table the discussion about acquisition of Small Works until the Library finished because they wanted to get a sense of what the building looked like inside.

Regarding the Library, Mayor Tatzin said the last item is to end operational subsidy to public library services. They have entered into loans and other agreements with the Lafayette Library and Learning Center Foundation to provide funding which is highly leveraged.

GABRIEL FROYMOVICH suggested decoupling the Foundation from being directly involved with the City Council.

Mayor Tatzin said there is a certain amount of work that needs to be done between now and when the Library opens but he could envision the Arts Committee serving a role for the rotating shows that go through the Gallery. Ms. Merideth said the City Council revised its public art ordinance and talked about a public art committee. The intent was to have a committee finish up the $500,000 which is part of the library budget and it would then be taken over by an art committee that would take care of the entire city, which is funded by developer contributions.

Mr. Falk said it is his understanding that there will be rotating art shows in the Community Hall and he confirmed that the Art Committee would handle those.

Councilmember Anderson questioned the net savings from Mr. Froymovich's suggestion, and Mr. Falk believed it would be minimal. A staff member is needed to post the Brown Act agendas and attend the meetings, but it would be roughly about 2% of the Community Development Director's time and no person to eliminate as a result.

GABRIEL FROYMOVICH referred to the $5,000 arts grant, and he questioned if it was necessary to include it in the budget and utilize it as needed. Mayor Tatzin noted it was more a question of communication with the public about the City's intent.

GUY ATWOOD said for many years, the City functioned very well without a DRC. He questioned if there was some intent to go out for a bond or ballot measure, and Mayor Tatzin said there is no active consideration, and the City expects the County may reduce its contribution by some unknown amount. Mr. Falk noted that in communications with the County, this may not occur.

Mayor Tatzin said there are items in the Finance Review Committee's list that are not listed. He questioned whether the City could eliminate the holiday party or bring attorney services in-house, and various other things.

Councilmember Federighi said she sees that under Parks and Open Space acquisition, there is $21,000 for a community survey. She felt it was premature for a survey, knows it has been added to the budget, but suggested adding open space survey to another phone survey that is being conducted. Mr. Falk said this is an item the Open Space Committee requested be put into the budget. It is their expectation that they will identify as part of the work plan a number of parcels they think will make for good candidates for open space acquisition and that voters may have some willingness to pay some amount to acquire those parcels or at least create a fund that would leverage other agencies to acquire those parcels. In addition, the Council has also established a Charter City Committee and in conversations with the Finance Committee (Anderson and Tatzin), there is a feeling that this survey could be used to cast any findings that may emanate from that committee, as well.

Councilmember Federighi said right now, the Committee is going through different criteria that should be used to identify, which will take some time. She thinks the survey for open space seems premature for between now and June of next year. Mayor Tatzin said if the Charter City Committee were to do a survey, they would probably conduct it much earlier. Councilmember Federighi questioned if the open spaces portion be as much as $21,000, and Mr. Falk said the general fund will pay for it regardless of where it is put in the budget. Mayor Tatzin noted the Charter City Committee did not create a budget for itself. Councilmember Anduri noted that the Open Space is on a fast track to have a report by the summer, and Mayor Tatzin suggested leaving it in the budget. Councilmember Anderson felt this was an opportunity to include questions that might relate to open space in the Charter City Committee survey as well, and he supported this.

Councilmember Federighi referred to the Impact Fee Study of $50,000, and said the City just instituted hefty increases in developer fees and she is reluctant, until the impact is seen of that, to move forward with additional impact fees on new development. Therefore, she would feel the City could eliminate $50,000 for an Impact Fee Study at this point.

Mayor Tatzin felt the City now understands the methodology for impact fee studies. In order to adopt the fee, the City needs a study to show a nexus; however, he believed a reasonable assumption could be plugged in based upon development and this could be brought back to determine whether or not it is worth it. Or, he suggested figuring out whether the City could self-certify its own study given our understanding of the methodology. Mr. Falk said these are fairly technical studies, they need to be legally defensible and he does not have an analyst on staff that would do this. Mayor Tatzin said he could work with staff to determine what impact fees would bring us and compare it with the cost of the study and determine if it is worth doing. Councilmember Federighi did not want to add more impact fees at this point. Mayor Tatzin agreed with taking it out for a year. Councilmember Anderson felt that if fees are going to be added for development, this is probably the time to do it because there is not a lot of activity right now. He felt there are reasons to have the fees, a nexus will be shown and the City is not charging anymore than anybody else. Councilmember Federighi noted that Lafayette has more impact fees than any other city surveyed, except for Danville.

Vice Mayor Andersson felt Lafayette's impact fees had been comparatively lower than other surveyed cities, now it is up to what other cities' fees are, felt that adding more would put the City in a higher category and he did not know what effect it would have on development or not, and therefore, was comfortable in deferring the item for a year. Councilmember Anduri asked to defer it for a few months until information was gathered as to how much could be raised and compare it to other cities. Mayor Tatzin suggested taking it out of the budget, get information, and as needed, add it back at the mid-year budget. The Council agreed to remove Impact Fees for now.

Mayor Tatzin said in terms of the General Fund budget, he questioned if the Council was comfortable with the set of numbers, with bringing back the CIP Budget. Councilmember Federighi felt it would leave them close to the $900,000. She said the comment was made that the money needs to be spent for roads, which is the proposal, but what was done with the ±$380,000 is that it is being used for roads in this budget and it must be spent for roads for this year and next year. What was done is that $1 million is being taken from the general fund and not from other things in the budget. She suggested a wait and see on the item, but would like to be able to use the $400,000 in general fund, but feels more comfortable with a deficit of $500,000 than $900,000. Councilmember Anduri said he was fine with this as long as the sense of the Council is that we are not in a worse situation next year and $400,000 from the general fund is used for roads for this year and next year.

Mayor Tatzin confirmed that for this year's budget, $400,000 will not be reserved for the CIP Sinking Fund; that the Council will indicate that they would like to be in a situation where it can be put back, but it will still transfer all of the garbage franchise fee to roads and also $600,000 of the general fund will go to roads. The City Engineer has indicated this will essentially use up staff capacity.

Mayor Tatzin said now, the City is looking at an operating deficit of $500,000.

Councilmember Anduri questioned the money the State is borrowing and questioned why this is not reflected as a receivable. Ms. Robinson said accounting-wise, it is counted as a receivable, but it is pretty much the same thing the City is doing with the RDA loans; whether you count it as a receivable or not, you would not be in the same position with your reserve because it is not cash.

Councilmember Anduri said the Council made a policy decision that it would not count it. He questioned if there is an accounting rule. Ms. Robinson said there is no accounting rule, but in terms of your Reserve standard, it is what the Council sets it to be, although it would be inconsistent to count certain loans as cash and others not. So, the effect will be the same.

Mayor Tatzin agreed; we should count it as a receivable which will be done, but he is tempted for political purposes to fully reserve the receivable but not write it off, which would send a message about what the City thinks about the State's credit rating.

Mayor Tatzin said there were other items to cover and asked Mr. Falk to discuss the status of the library discussion. Mr. Falk said the Council, as part of the Downtown Strategy, ordered the preparation of a cost benefit analysis to determine the efficacy of converting the old library into City offices. Currently, the City pays $332,000 in annual rent and the Council has, since 1995, a policy goal to acquire a City office building and get out from under the rent payment. As part of the settlement agreement, it requires that when the new library is completed, the City must purchase the old library. The City will own the library and the question becomes how the Council wants to use it. He said the City hired Bay Area Economics to do the cost benefit analysis, which came back conclusively that it was in the City's interest to convert the library to City offices. Interestingly, the consultant felt that the most efficient way to do it would be issue COPs at a low interest rate. Mr. Falk said his recommendation was that he did not like debt, the City has been working on saving $2 million for the project for 15 years, and he likes the simpler approach by converting the library to City offices. He said the cost analysis suggests the City will be $850,000 short. It will cost $3.2 million which would not be incurred until the following fiscal year in 2010/2011 which would be a general fund expenditure in order to complete the project.

Mayor Tatzin questioned if the feasibility of acquiring the property was gaining control, and Mr. Falk said the property was owned by the Moraga Company in the early part of the 1900's. There apparently may be some language in the deed that suggests that when the property changes hands, it cannot be used for a business purpose. Staff has scheduled a closed session after the regular meeting to discuss it.

Councilmember Federighi questioned if cost estimates were realistic, and Mr. Falk felt they were actually high because they were put together when construction costs were higher than they are now.

Vice Mayor Andersson questioned how the $3.2 million breaks down to purchase and renovation. Mr. Falk referred to page 134 of the budget breaks it down concisely. The purchase of the site would be about $840,000 and then the rehabilitation. Councilmember Anduri said there are at least two issues; should the library be used as City offices. It was his understanding there would be a noticed hearing where the public would be able to discuss the library's use which he though was to be noticed for this month. He said he was surprised to see it in the budget, and he did not know how the budget could be adopted without having the hearing. Mayor Tatzin said the closed session precludes the Council from making a decision right now anyway.

Councilmember Anduri said secondly, assuming it will be City offices, he questioned why it would not be financed through COPs. He would want to hear more about why it would not be done this way. There was a group that looked into it and recommended it be done this way. The advantage is that the City has $2.4 million which can be used for roads and it gives the City the advantage to fix the roads faster and getting ahead of the curve, and saving money that way.

Councilmember Anderson questioned the net annual savings if the City moved to the library in terms of operational costs. Councilmember Anduri noted it was $50,000 a year net and Councilmembers explained how this was achieved.

GUY ATWOOD said what would be helpful is that the community could get a copy of the report and confirmed it was online as part of the Lafayette Finance Review Committee report. He felt it was important for the public to discuss it, what he is hearing is that people are going to start berserk which is putting it mildly.

Mayor Tatzin suggested meeting in Closed Session and then determine at what pace to proceed.

Mayor Tatzin noted there was another issue on open space by Councilmember Anduri. Councilmember Anduri said he felt it would be addressed in Item 8A, which is use of Measure WW funds.

Mayor Tatzin questioned if there were other items to be discussed in the budget. Councilmember Anduri said he was in favor of the earthquake insurance. Mr. Falk noted the estimate was rough, said the estimate from their risk manager was $150,000 which was unacceptable to the pool of agencies, and the risk manager is trying to identify a new carrier, which will be brought back. Councilmember Anderson confirmed that this was not something the City was required to have, but Ms. Robinson said this was the original reason people starting pulling out of the program however, if something does happen, people will most certainly ask why the City did not have insurance. Councilmember Anduri felt that if there is a major earthquake, everybody is making demands on the same pool.

Ms. Robinson noted there is a total amount of $50 million in the insurance pool and there is an insured liability of about $150 million, and apparently this is not uncommon since the experience is that there would not be 100% losses for all insured buildings. If this were in fact the case though, the City would get 30 cents on the dollar. Mayor Tatzin questioned if the cities in the pool were geographically dispersed or concentrated. Ms. Robinson noted they were concentrated as Contra Costa cities, the buildings need to be named, and she said according to experts, newer buildings are much less susceptible that older buildings because they have been built to higher standards. Another issue is that those with older buildings are less willing to insure them for as much money as it takes to rehabilitate them, and this is why the pool fell apart with people pulling out of it.

Mayor Tatzin confirmed with the Council to follow staff recommendation and the item will be continued to the June 8 meeting at which point the revised budget would be adopted.

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anderson/Federighi) to adjourn the Redevelopment Agency Meeting. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

7. OLD BUSINESS

A. Tony Coe, Engineering Services Manager
Stanley Boulevard/Springbrook Road Traffic Calming Project Approval of Design Plans
Recommendation: Approve traffic calming design as presented and authorize staff to proceed with advertising for bids to construct the project.

Mr. Coe confirmed with the Council there was no need to provide the staff report.

Vice Mayor Andersson said one of the proposals to provide a 10 foot traffic lane was to narrow the 4 foot median to a 2 foot median. He said this is simply a raised barrier and it did not strike him that a 2 foot median would be that much less visual or effective than a 4 foot median, and he questioned what the rationale was to accomplish what is needed. Mr. Coe said it was somewhat empirical, but experience is that a center median should not be less than 4 feet. In this case, given they are designing the curbs to be mountable, if there is a 2 foot median, you are creating a very narrow, mountable bump in the middle of the road which could be a safety hazard for cars. With a 4 foot median there is a larger, more visible mass, and if someone did drive on top of it, there is some width which would not cause people to bottom out or lose control.

ACTION: It was M/S/C (Federighi/Anderson) to approve traffic calming design as presented and authorize staff to proceed with advertising for bids to construct the project. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

Mayor Tatzin suggested addressing the Consent Calendar.

10. CONSENT CALENDAR

Mayor Tatzin noted that Item 10.H was added to the agenda.

ACTION: It was M/S/C (Federighi/Anderson) to convene as the Redevelopment Agency. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

Councilmember Federighi requested removal of Item 10G, and she would abstain from item 10.A.3 the May 18, 2009 minutes.

ACTION: It was M/S (Andersson/Anderson) to approve Consent Calendar items 10A.1, 2, B, C, D, E, F and H. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson: Noes: None; Absent: None) Item 10.A.3. Vote 4-0-1-0 (Ayes: Tatzin, Andersson, Anduri, Anderson; Noes: None; Abstain: Federighi; Absent: None).

A. **City Council Minutes**
   1. **May 11, 2009**
      Recommendation: Approve.
   2. **May 18, 2009**
      Recommendation: Approve.
   3. **May 20, 2009**
      Recommendation: Approve.

B. **Ordinance 583 Amending Chapter 8-1 of the Lafayette Municipal Code Relating to Walkways Impact Fees and 584 Amending Chapter 8-17 of the Lafayette Municipal Code Relating to Drainage Impact Fees; Resolution 2009-32 Setting the Walkways Impact Fees and Resolution 2009-33 Setting the Drainage Impact Fees**
   Recommendation: Waive second reading and adopt Ordinance 583 and Ordinance 584 and adopt. Resolutions 2009-32 and 2009-33 setting the amount of these fees.

C. **2009 Annual Housing Report**
   Recommendation: Approve the annual report and direct staff to submit the document to the State Department of Housing and Community Development.

D. **Letter of Commitment as a participating jurisdiction in ABAG's Multi-Jurisdictional Hazard Mitigation Planning**
   Recommendation: Direct City Manager to send letter of commitment to ABAG and CalEMA.

E. **Status of Code Enforcement Activity and Real Estate Sign Abatement**
   Recommendation: Receive and file.

F. **Mt. Diablo Boulevard Pathway – Extension from Lafayette Reservoir to El Nido Ranch Road**
   Recommendation: Confirm City Manager's direction to proceed with construction of the path extension.

H. **Response to TRANSPAC's Comment Letter regarding its Central County Action Plan**
   Recommendation: Authorize Mayor to send response letter to TRANSPAC

Item Removed:

Convene Redevelopment Agency

G. **Amended City and Redevelopment Agency Records Retention and Destruction Schedule**
   Recommendation: Adopt Resolution 2009-37 Updating the City Records Retention and

Destruction Schedule and Resolution R2009 Updating the Redevelopment Agency Records Retention and Destruction Schedule.

Councilmember Federighi questioned if there was any time where tapes of the Council meeting had to be listened to. She noted that as soon as minutes are approved, the tapes would be destroyed. City Clerk Robbins said she receives very few requests, and it is usually very soon after a meeting where the request will be to copy the tape, which is allowable.

Mayor Tatzin questioned legal advice, and Ms. Donnolly noted the policy meets the minimum requirements and it was in the Council's discretion. Councilmember Federighi suggested it be two months after minutes are approved and optic scanned. Councilmembers agreed.

ACTION: It was M/S/C (Anderson/Andersson) to approve Item G. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anderson/Andersson) to adjourn the Redevelopment Agency Meeting. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

8. STAFF REPORTS

A. Jennifer Russell, Parks, Trails & Recreation Director
Parks, Trails and Recreation Capital Improvement Plan

Recommendation: Review and approve the Parks, Trails and Recreation Capital Improvement Plan.

Parks, Trails & Recreation Director Jennifer Russell offered to continue the item to another meeting, and the Council requested that the item be discussed.

Ms. Russell reported that the PTR Commission and staff worked on the plan, they note that the existing 4 park properties are built out and the next step is to start acquiring more parkland to meet the General Plan goal, which they are short by 29 acres, and as population grows, they will be even shorter. They established a new Fund 17 for parkland and open space acquisition and the two would be kept and tracked separate unless there was a need to keep them together within the Fund. She said Engineering staff costs would be covered under Fund 12 as opposed to general fund monies; although, the part of her salary to oversee the whole CIP would come from general fund monies.

In February of this year, it was a historic low in park fees with $700 being taken in for parkland acquisition, in-lieu fees, and facility fees. Last year they had $265,833 and they are only up to $58,355, which is a significant decrease. When the CIP was adopted last June, they were looking at some amount of decrease but nothing like this. This is the reason they included the EBRPD Measure WW funds in the program. The total cost is $1,802,501 and they have 10 years to spend the money. Each year in February, applications are taken, reviewed and approved. She said report included five tables showing all projects that the PTR Commission would like seen done, Table 2 talks about potential parkland acquisition, trail and facility development, Table 3 is the summary of the 6 year program, Table 5 is Fund 17 illustrative of park acquisition expenditures and placeholder fees, with the Olympic Boulevard Staging Area bumping up acreage. The revenue forecast shows less in revenue, but over time, they are conservatively hopeful that in a 6 year period, it is estimated that $1,150,000 would be received for park facility fees and the same amount for park fees.

Ms. Russell said there are three projects in the next fiscal year; 1) the Manzanita Room; 2) a Bike Park; and 3) the Burton Ridge Trail Connector project, which is actually three projects in one and a trail along Murray Lane that connects next to the Community Park, weatherizing the trails through the north end of the park and tying in to the Community Center bridge, which also includes a foot bridge. Donations are expected, there are potential grants, and she has applied for small grants. She noted a large grant; the 2006 Clean Water Bond Act, which is intended for communities underserved with parks and recreation and highly competitive. They are looking at $35,000 from the Community Foundation for the Manzanita Building, at least $5,000 in donations for the Bike Park, but more significantly a substantial amount of volunteer labor. The report talks about fund transfers and a $15,000 sinking fund to save money for playground equipment. They are continually seeking volunteers and continue to rely on John Keifer to keep volunteers maintaining trails.

She said they are going into next fiscal year finishing up the Community Park Children's Play area in the summer, which will take a significant amount of their fund balance even though bids were received well below the estimate. For the Manzanita Room, after the Council and Commissions move to the new Library, staff plans to offer new programs and make the building popular and useable and add restrooms onto the end of the building. There are also some trails projects, they will utilize engineers as project managers to be paid out of the fund, they will have new opportunities in purchasing park properties which is included in the Parks and Recreation Facilities Master Plan to be done in the early fall. Two phases have been completed--a background report, public outreach, and the survey indicated that the community was very supportive of parks, more support was identified for ball fields, high interest for more downtown parks in three specific areas which would be referenced in the master plan, which all have a creek bordering them. She said Table 1 breaks down the projects, costs and improvements.

Councilmember Anderson questioned Fund 17, page 22, parkland acquisitions, stating that it notes that Olympic Park is listed as an unspecified locations and amounts, and he questioned and confirmed that those were meant to be acquisitions as placeholders. He questioned if the numbers were accurate, noting this is a good time to purchase property. He asked if the acquisitions should be done now while prices are inexpensive and defer other improvements. Ms. Russell said the only property in mind was the Olympic Boulevard staging area and they are hoping to acquire that for $50,000. When the master plan comes before the Council in the early fall, they will identify areas where there is a need to have parks and with estimates; however, they would need to come up for sale. Councilmember Anderson felt the numbers seemed low once out in the market. Ms. Russell said borrowing against future fees has not been done, but could be when a great property comes before the City. Councilmember Anderson questioned if the list would be coming along with the master plan, and Ms. Russell said there will be some specific parcels identified, but the rest will be very general in nature.

Councilmember Anduri referred to a good time to purchase land, he felt a broader discussion of priorities should occur, said the discussion started with the use of the Measure WW funds because one alternative use is open space, particularly now when there are fairly obvious properties that people think are open space and are not. He felt Measure WW funds were a good way to kick-start an open space program, and his only concern from page 5 is that the Measure AA and WW funds is used beginning this year and there will be no money for an open space program. He did not know how this should be handled, acknowledged it was a high priority and he felt open space was also a high priority.

Mayor Tatzin questioned what interaction there had been between the Commission and the Open Space Committee. Ms. Russell said Alison Hill serves as a liaison on the Committee and right now, the Commission has not been approached with a piece of property that the Commission believes is a high priority or one they should set aside funds for. Currently, the Commission has projects they feel are important to a good portion of the community. Also, because of the economy, expected park fees have been lost. She noted there must be public access for Measure WW funds to be used and when the City applies, it must show it owns the property or a long-term lease. Therefore, taking the money and setting it aside hoping it be used for an offer would be something the Council directs the Commission to do, because they are now working on completing their three major projects.

Mayor Tatzin said the Council created the Commission who has always done good 5-year plans, looked at available resources, minimizing general fund money, and then created an Open Space Committee which may believe they have access to some of those funds. He questioned whether they were communicating as best they should. One approach may be to defer action on this and encourage the Commission and Committee to get together and work out something they could bring to the Council jointly or not. They may just conclude they have different points of view and they want the Council to make the decision and that's okay. But to defend one this month and the other another month is not productive.

Mr. Falk said he is aware that the Director of the Muir Heritage Land Trust has approached a property owner in Lafayette of a major open space property which does have access and is trying to put together a deal which would be funded by four different agencies. It is not known whether the property owner will be willing to sell. The reason it is being done by the Trust is that the property owner may distrust approach by the City, the owner may have a development application before the City which would preclude the City from entering into negotiations, and this acquisition may or may not come to fruition. But, if money is allocated from Measure WW, the City may not have funds to participate.

Mayor Tatzin said he did not know of any representations made to Muir Heritage Land Trust and has taken no action to do so. He noted that Councilmember Anduri is a representative to the Open Space Committee and Parks and Recreation Commission and he asked that he assist in bringing everything together.

Councilmember Anduri said they held a meeting to discuss open space; it was clear that the Commission believed they had enough on their umbrella and did not want to take on open space, which is the reason there is a separate committee. He noted that the property referred to in Lafayette is probably the most visible property in the eastern part of Lafayette.

Mayor Tatzin thinks also what needs to be resolved is that the two groups actively thinking about spending the same money, and he would encourage Councilmember Anduri to work with this.

GEOFF BELLENGER said he thinks this is clearly the biggest issue as far as their CIP in presenting it to the Council. They knew this would raise the issue and happy the Council is engaged; however, the difficulty is that they feel the community is short on parks and recreation facilities. They have fell far short of their goals, and they believed one of the best ways of addressing it is to put forward their recommended uses of funds and priorities. They want to move forward quickly with doing the Manzanita Room and the Bike Park which are both in active play. To some extent the Burton Ridge Trail connector is not as far along, but in order for the projects to move forward, they will need assurances of additional funding beyond what they receive through fees and fund balance. Secondly, he said open space does not count against the

parkland requirement; their goal of 5 acres per 1,000 people. He was not sure how to resolve this between the two Commissions, questioned whether a certain amount of funds could be reserved for opportunities, and they would have to look at their plan to determine what effects it has on project timelines. He said it would also have a cascading effect; in terms of funding over the longer term given the fixed forecast, future funds will have to be used for any funds needed now and the CIP will be short.

Councilmember Anderson said he believes the Council needs to have an opportunity to look at this and hoped that Councilmember Anduri could work with both bodies. Mayor Tatzin said he was not sure it could be resolved in the next month, and Councilmember Anduri noted he would not be available next month. Mr. Bellenger said if whole million dollars needs to be set in reserve for decision-making as open space opportunities arise, then this puts all of the things they would want to use those funds for on hold. Mayor Tatzin said the Council has not had an opportunity to hear from the Open Space Committee. Even if the Council needs to resolve this, the Council should hear from both groups and he hoped for Councilmember Anduri to serve as liaison for both groups. If there is a need to move more quickly, Councilmember Federighi and Councilmember Anderson, as alternates, might also work with the two groups to accomplish the same thing. Councilmember Federighi said she did not see an easy reconciliation. Councilmember Anderson said the Measure WW money will not come on line until next year, even if the application is made early in the year. Mayor Tatzin said if this is where the conflict is, then the Council can wait until Councilmember Anduri returns.

Mr. Bellenger said he thinks the Commission needs to go back, look at the programs and priorities and determine what it would mean to take out one million dollars. Mayor Tatzin felt the Commission should discuss the fact that the Measure WW money will not be available until next year and make sure there is a 2009/2010 plan that recognizes that availability of funds. Councilmember Anderson said this is what the plan has, but it would be good to have an understanding prior to going into the next budget cycle when this money actually would be available to be spent. Ms. Russell said they have enough money to start on that design, they were meeting with engineering staff and they could delay the process. Mayor Tatzin confirmed with Councilmember Anduri he could meet in July and August with both the committee and commission.

9. PUBLIC HEARING - None

11. COUNCIL/COMMISSION REPORTS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

12. WRITTEN COMMUNICATIONS

A. Request from Marie McKechnie, volunteer with the Wellness City Challenge, requesting a proclamation declaring Council support for the "Wellness City Challenge" and Healthy Eating Guidelines
Recommendation: Receive and file.

ACTION: It was M/S/C (Anduri/Andersson) to receive and file. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

14. ADJOURNMENT

The City Council adjourned at 12:15 a.m. to Closed Session, and thereafter, to the next Regular/Special meeting on June 8, 2009.

APPROVED:

Don Tatzin

Don Tatzin, Mayor

ATTEST:

Joanne Robbins

Joanne Robbins, City Clerk

City of Lafayette
Public Meeting / Special Meeting
Lafayette City Council
Redevelopment Agency

MINUTES

Lafayette Community Center – Manzanita Room
500 St. Mary's Road, Lafayette, California

May 26, 2009
9:30 p.m.

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 12:15 a.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, Vice Mayor Andersson (recused) and Councilmembers Anderson, Anduri and Federighi

Absent: None

Staff: Staff: Steven Falk, City Manager, Mala Subramanian, City Attorney, Ann Merideth, Community Development Director, Tony Coe, Engineering Services Manager

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

4. PUBLIC COMMENTS - None

5. CLOSED SESSION

A. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to Litigation pursuant to Government Code section 54956.9(b) (1 Case)
Recommendation: Discuss and direct staff.

B. Conference with Real Property Negotiators (Government code section 54956.8)
Property: APN 234-010-013 (952 Moraga Road, Lafayette, CA)
Agency Negotiator: Steven Falk, City Manager/Executive Director
Negotiating Parties: Steven Falk, City Manager/Executive Director and Contra Costa County Administrator
Under Negotiation: Price and Terms of Payment
Recommendation: Discuss and direct staff.

6. ADJOURNMENT

The City Council adjourned at 12:45 a.m. to the next regular meeting on June 8, 2009.

APPROVED:

Don Tatzin, Mayor

ATTEST:

Joanne Robbins, City Clerk